

00001-01 UNITED STATES DISTRICT COURT
 00001-02 NORTHERN DISTRICT OF OHIO
 00001-03 EASTERN DIVISION
 00001-04 -----
 00001-05 IRON WORKERS LOCAL UNION No.)
 00001-06 17 INSURANCE FUND and its)
 00001-07 Trustees, et al.,) No. 1:97CV1422
 00001-08 Plaintiffs,) VOLUME I
 00001-09 vs.)
 00001-10 PHILIP MORRIS, INC., et al.,)
 00001-11 Defendants.)
 00001-12 -----
 00001-13 Deposition of LYNN BEASLEY, at
 00001-14 200 West Second Street, Winston-Salem,
 00001-15 North Carolina, commencing at 9:16 A.M.,
 00001-16 Thursday, January 7, 1999, before
 00001-17 Jane F. Allen, RPR.
 00001-18 PAGES 1 - 280

00002-01 APPEARANCES OF COUNSEL:
 00002-02 FOR THE PLAINTIFFS:
 00002-03 WEITZ & LUXENBERG
 00002-04 BY: JERRY KRISTAL, ESQ.
 00002-05 51 Haddonfield Road
 00002-06 Suite 160
 00002-07 Cherry Hill, New Jersey 08002
 00002-08 (609) 488-9001
 00002-09 FOR THE DEFENDANT R.J. REYNOLDS
 00002-10 TOBACCO COMPANY:
 00002-11 JONES, DAY, REAVIS & POGUE
 00002-12 BY: STEPHEN J. KACZYNSKI, ESQ.
 00002-13 901 Lakeside Avenue
 00002-14 North Point
 00002-15 Cleveland, Ohio 44114
 00002-16 (216) 586-3939
 00002-17 -AND-

00003-01 APPEARANCES OF COUNSEL (CONTINUED):
 00003-02 JONES, DAY, REAVIS & POGUE
 00003-03 BY: CATHERINE B. STEVENS, ESQ.
 00003-04 3500 Suntrust Plaza
 00003-05 303 Peachtree Street
 00003-06 Atlanta, Georgia 30308-3242
 00003-07 (404) 521-3939
 00003-08 ALSO PRESENT:
 00003-09 MARTIN NOBREGA, VIDEOTAPE OPERATOR

00004-01 VIDEOTAPE OPERATOR: Today is January 7th,
 00004-02 1999. The time is 9:16 a.m. Would the court
 00004-03 reporter please swear in the witness.
 00004-04 LYNN BEASLEY,
 00004-05 having been first duly sworn, testified
 00004-06 as follows:
 00004-07 MR. KRISTAL: Perhaps all counsel should
 00004-08 identify themselves on the video record. My name
 00004-09 is Jerry Kristal. I represent the plaintiffs in
 00004-10 this case.
 00004-11 MR. KACZYNSKI: Steve Kaczynski, Jones, Day,
 00004-12 Reavis and Pogue in Cleveland, for R. J.
 00004-13 Reynolds.
 00004-14 MS. STEVENS: Catherine Stevens, Jones, Day,
 00004-15 Reavis and Pogue.

00004-16 | EXAMINATION
00004-17 | BY MR. KRISTAL:
00004-18 | Q. Good morning.
00004-19 | A. Good morning.
00004-20 | Q. We introduced ourselves earlier. Do
00004-21 | you prefer Miss or Mrs?
00004-22 | A. Mrs. is fine. Or Lynn Beasley -- I
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00005-01 | mean.
00005-02 | Q. Well, I'll be calling you probably by
00005-03 | your last name. I don't want to offend you.
00005-04 | Mrs. Beasley is fine?
00005-05 | A. Mrs. Beasley.
00005-06 | Q. Mrs. Beasley, I know you've been
00005-07 | deposed before. I know you've testified before.
00005-08 | Real quickly three important kind of ground
00005-09 | rules: If you don't understand what I am asking
00005-10 | you, please stop me, let me know. Tell me you
00005-11 | don't understand the question or it needs
00005-12 | clarification, and I'll do my best to help you
00005-13 | out so that you are answering questions that you
00005-14 | are understanding. Is that okay?
00005-15 | A. Yes.
00005-16 | Q. Second is, we need to have verbal
00005-17 | responses, because although you are on video
00005-18 | camera and most of us can interpret nods of the
00005-19 | head, we have to have a stenographic record as
00005-20 | well. All right?
00005-21 | A. Yes.
00005-22 | Q. Lastly, I will try to wait until you
00005-23 | finish your answer before I ask my next question,
00005-24 | and I would ask that you not only wait until I
00005-25 | finish my question before answering, but counsel
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00006-01 | may also have objections that need to be put on
00006-02 | the record as well. It is not really normal
00006-03 | conversational tones, but I think you are
00006-04 | probably aware of that. All right?
00006-05 | A. All right.
00006-06 | Q. What is your date of birth?
00006-07 | A. 7-10-57.
00006-08 | (Deposition Exhibit 1 was marked for
00006-09 | identification and is annexed hereto.)
00006-10 | BY MR. KRISTAL:
00006-11 | Q. I'm going to mark as Exhibit 1, a
00006-12 | copy of what has been provided to us as your
00006-13 | curriculum vitae. I would like to just give it to
00006-14 | you and ask you if in fact that is your
00006-15 | curriculum vitae.
00006-16 | Let me ask you, the first two pages
00006-17 | -- first page says curriculum vitae, Lynn J.
00006-18 | Beasley and it lists various education and work
00006-19 | experience. The third page is something titled
00006-20 | Lynn J. Beasley: Reliance Materials and the
00006-21 | fourth page is a little two sentence note and
00006-22 | then the fifth page, I believe, lists all of the
00006-23 | cases in which you have given any sort of sworn
00006-24 | testimony, whether it is deposition, trial or
00006-25 | other administrative proceeding.
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00007-01 | Are the first two pages your
00007-02 | curriculum vitae or resume?
00007-03 | A. Yes, they are.

00007-04| Q. Is it current as we sit here today?
00007-05| A. Yes.
00007-06| Q. I'll get to the other pages probably
00007-07| in a little while. I just want to focus on the
00007-08| first two for right now. Am I correct that your
00007-09| current position is an executive vice president
00007-10| with the R. J. Reynolds Tobacco Company?
00007-11| A. Yes.
00007-12| Q. And are you executive vice president
00007-13| of marketing?
00007-14| A. Yes.
00007-15| Q. There are, if I'm correct, two other
00007-16| executive vice presidents?
00007-17| A. Yes.
00007-18| Q. Could you tell me their names and
00007-19| what follows executive vice president, i.e.,
00007-20| marketing following your title.
00007-21| A. Chuck Blixt, who is --
00007-22| Q. Chuck?
00007-23| A. Blixt.
00007-24| Q. B-L-I-X-T?
00007-25| A. B-L-I-X-T. And he's our executive

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00008-01| vice president, general counsel.
00008-02| Q. And the other executive vice
00008-03| president.
00008-04| A. Is Bob or Robert Gordon, executive
00008-05| vice president, I believe it is personnel. It
00008-06| might be human resources, but I think it still
00008-07| says personnel.
00008-08| Q. Something in that area, personnel or
00008-09| human resources.
00008-10| A. Yes. It is human resources
00008-11| personnel.
00008-12| Q. Are there any other executive vice
00008-13| presidents other than yourself and the two people
00008-14| you just mentioned?
00008-15| A. Not in R. J. Reynolds Tobacco
00008-16| Company.
00008-17| Q. Now, that is the next to the highest
00008-18| corporate level; is that correct, the executive
00008-19| vice president level?
00008-20| A. In our tobacco company. The next
00008-21| level is the CEO of the company, Andrew
00008-22| Schlinder.
00008-23| Q. Mr. Schlinder is president and CEO of
00008-24| R.J. Reynolds Tobacco Company?
00008-25| A. Yes.

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00009-01| Q. And you and Mr. Blixt and Mr. Gordon
00009-02| report directly to him?
00009-03| A. That's correct.
00009-04| Q. Are you on any sort of executive
00009-05| committee?
00009-06| A. Yes.
00009-07| Q. How long have you been on the
00009-08| executive committee at -- is it with R. J.
00009-09| Reynolds Tobacco Company?
00009-10| A. Yes.
00009-11| Q. For purposes of this deposition, if I
00009-12| say RJR or R.J. Reynolds, I'm referring to the
00009-13| tobacco company. Is that okay? So I don't have
00009-14| to keep repeating the full name.

00009-15| A. That's fine.
00009-16| Q. Who else is on the executive
00009-17| committee for R.J. Reynolds?
00009-18| A. It's the executives that report
00009-19| directly to Andrew Schlinder.
00009-20| Q. It is the three individuals you've
00009-21| mentioned?
00009-22| A. No. There are more that report
00009-23| directly to him.
00009-24| Q. How many total people are there on
00009-25| the executive committee?

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00010-01| A. Are you going to want their names?
00010-02| Q. Not if you are having trouble
00010-03| recalling them. I just want to know ball park.
00010-04| Is this a big committee, small committee?
00010-05| A. I would say, you know, roughly ten
00010-06| people, eight people, maybe. Something like
00010-07| that.
00010-08| Q. What is the function of the executive
00010-09| committee?
00010-10| A. We have a meeting scheduled once a
00010-11| week where we just keep each other up-to-date on
00010-12| what's going on. We don't have it necessarily
00010-13| every week. It is scheduled every week, but
00010-14| sometimes it gets canceled.
00010-15| Q. Are all of the members of the
00010-16| executive committee on the vice presidential
00010-17| level?
00010-18| A. Yes.
00010-19| Q. You are an executive vice president
00010-20| as opposed to a vice president?
00010-21| A. That's correct.
00010-22| Q. So other than the three individuals
00010-23| who are executive vice presidents on the
00010-24| executive committee, there are seven vice
00010-25| presidents?

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00011-01| A. Well, no. There are senior vice
00011-02| presidents between vice president and executive
00011-03| vice president.
00011-04| Q. Has it -- if I'm looking at your
00011-05| resume and reading it correctly, that is kind of
00011-06| the chain that you went through. You went
00011-07| through vice president, senior vice president and
00011-08| now executive vice president.
00011-09| A. That's correct.
00011-10| Q. When do you replace Mr. Schlinder?
00011-11| I'm just kidding.
00011-12| When you first started at R.J.
00011-13| Reynolds in July of 1982, you were not married
00011-14| and your last name was Breininger.
00011-15| A. Breininger.
00011-16| Q. B-R-E-I-N-I-N-G-E-R?
00011-17| A. That's correct.
00011-18| Q. When did you get married?
00011-19| A. I got married in September of 1989.
00011-20| Q. Is Mr. Beasley a RJR employee?
00011-21| A. No.
00011-22| Q. Has he ever been?
00011-23| A. Yes.
00011-24| Q. When -- I've seen documents with R.B.
00011-25| Beasley. Is that your husband?

00012-01| A. Unless there was someone else with
00012-02| his initials. But those are his initials.
00012-03| Q. What is his first name?
00012-04| A. Ronald.
00012-05| Q. When did your husband retire from
00012-06| RJR?
00012-07| A. He didn't retire.
00012-08| Q. I'm sorry.
00012-09| A. I mean, he left RJR in March of 1989,
00012-10| I believe.
00012-11| Q. So some six months before you got
00012-12| married?
00012-13| A. Right.
00012-14| Q. What was his last position at RJR?
00012-15| A. He was a senior vice president sales.
00012-16| Q. How long had he been at RJR prior to
00012-17| his leaving in March of 1989? Approximately.
00012-18| A. Okay. Approximately. I'm going to
00012-19| say around 20 years.
00012-20| Q. So he was working there at the time
00012-21| that you started?
00012-22| A. Yes.
00012-23| Q. When you started in July of 1982, did
00012-24| you work with your husband or in the same group
00012-25| with your husband?

00013-01| A. No.
00013-02| Q. What group was he in at that time?
00013-03| A. I don't know. I didn't know him.
00013-04| Q. When did you first meet your husband?
00013-05| A. You know, I'm not exactly sure. I'm
00013-06| going to say, you know, somewhere around two or
00013-07| three years before we got married. He came into
00013-08| internal sales, and I think it was around that
00013-09| time frame. But I'm not sure that's the first
00013-10| time I met him.
00013-11| Q. We won't show him this portion of the
00013-12| transcript.
00013-13| Do you currently have a written
00013-14| contract with RJR?
00013-15| A. Yes.
00013-16| Q. Was that contract, the current one
00013-17| you have, signed when you became executive vice
00013-18| president in November of 1997, or is it a more
00013-19| recent contract or is it a carryover contract
00013-20| from a former position?
00013-21| A. I'm just thinking about when -- I
00013-22| think -- I think that was done when I was a
00013-23| senior vice president.
00013-24| Q. Do you own shares of either R.J.
00013-25| Reynolds Tobacco Company or any other Reynolds

00014-01| entity? Stock shares.
00014-02| A. Well, they are not shares of RJR
00014-03| Tobacco Company. If you mean RJR Nabisco, yes.
00014-04| Q. Is your ownership of those shares
00014-05| either in whole or in part, due to some financial
00014-06| incentive for your employment or as contrasted to
00014-07| simply just buying those on the market as a
00014-08| nonemployee would? Do you follow what I am
00014-09| saying? Is there an incentive program where, as
00014-10| part of your salary, you get shares? As bonuses

00014-11 | do you get shares or is your ownership --
00014-12 | A. I see.
00014-13 | Q. -- is your ownership simply because
00014-14 | you called your stockbroker?
00014-15 | A. I see. I'm with you.
00014-16 | Q. Which is it? Or is it a combination?
00014-17 | A. It's like there are different
00014-18 | programs at different times. One program the
00014-19 | company has is, if you are in the savings plan,
00014-20 | they'll match your savings with RJR stock.
00014-21 | Another program is stock options. It's not there
00014-22 | now, but in the past there have been stock
00014-23 | options. And then there is a program called
00014-24 | restricted stock which, you know, technically you
00014-25 | don't own until it vests. It is sort of in your
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00015-01 | name, but you don't own it until it vests, and it
00015-02 | hasn't vested yet, so.
00015-03 | Q. Does it vest at a certain age or
00015-04 | certain tenure with the company?
00015-05 | A. Well, it is usually a time frame.
00015-06 | You know, options and restricted stock both.
00015-07 | Like they might give you a grant and it is five
00015-08 | years before they are yours, and if you are with
00015-09 | the company five years from then, then they are
00015-10 | yours.
00015-11 | Q. Is any portion of your current
00015-12 | compensation other than dollars? In other words,
00015-13 | do you get as part of your compensation anything
00015-14 | other than dollars?
00015-15 | A. Company car. Is that like what you
00015-16 | mean?
00015-17 | Q. Yes. I was thinking more along the
00015-18 | stock scenario, but company car would fall into
00015-19 | what I asked you, yes.
00015-20 | A. So when you say you are thinking --
00015-21 | Q. In other words, do you have your
00015-22 | salary -- well, what is your salary?
00015-23 | A. It is approximately 315,000, my base
00015-24 | salary.
00015-25 | Q. Do you, on top of that, get any stock
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00016-01 | in either the tobacco company or RJR Nabisco?
00016-02 | A. Well, it is the three programs I just
00016-03 | talked about. It is the restricted stock, stock
00016-04 | options, and then it is the company matching,
00016-05 | where they match what stock when you are in the
00016-06 | savings plan.
00016-07 | Q. Are you in all three of those plans
00016-08 | now?
00016-09 | A. Yes.
00016-10 | Q. How much stock do you currently own,
00016-11 | whether it is vested or not, in RJR or RJR
00016-12 | Nabisco?
00016-13 | A. Whether it is vested or not, I don't
00016-14 | know.
00016-15 | Q. Do you know the vested amount?
00016-16 | Maybe you misunderstood my question.
00016-17 | I don't care whether it is vested or not, and I
00016-18 | don't expect you to be able to breakdown. I'm
00016-19 | just talking about how many shares, sitting here,
00016-20 | do you think you own of RJR Nabisco stock?
00016-21 | A. I'm not sure, because I haven't

|00016-22| looked at the company plan in awhile. It is not
|00016-23| a large amount.
|00016-24| Q. I guess that's all relative.
|00016-25| A. The restricted stock, I don't

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|00017-01| remember what the grant was, because it doesn't
|00017-02| vest for five years and it is only in the first
|00017-03| year, so I don't remember what that grant was
|00017-04| for. But the stock options, I think that I have
|00017-05| approximately -- I think it is around 30,000
|00017-06| stock options.
|00017-07| Q. It is relative. You said not a lot
|00017-08| and I said it was relative, kind of joking.
|00017-09| Never mind. I'm just trying to make a little
|00017-10| joke.
|00017-11| A. Okay.
|00017-12| Q. What else is included in your
|00017-13| potential compensation, other than your base
|00017-14| salary of approximately \$315,000?
|00017-15| A. Also there is an annual company
|00017-16| incentive program for management levels that's
|00017-17| based on company goals for that year.
|00017-18| Q. Are those goals set individually for
|00017-19| you as opposed to a line? In other words, is the
|00017-20| goals -- are the goals the same for all executive
|00017-21| vice presidents or is there a Lynn Beasley goal?
|00017-22| A. No. In general it is a company goal.
|00017-23| There are few exceptions because it is just not
|00017-24| I'm not on it. It is probably, I don't know, 300
|00017-25| people that are on it, and there are some

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|00018-01| exceptions as to individual goals. But in
|00018-02| general most -- the majority of the people have
|00018-03| the single company goals, which I do.
|00018-04| Q. Who sets the goals?
|00018-05| A. Well, I would say it is Andy
|00018-06| Schlinder, our CEO, but I think that he obviously
|00018-07| talks to the RJR Nabisco people about that.
|00018-08| Q. If you meet your goals, or if the
|00018-09| goals are met, what do you get?
|00018-10| A. If the goals are met, I get 60
|00018-11| percent of my base salary.
|00018-12| Q. For how long have you had that annual
|00018-13| company incentive portion of your compensation?
|00018-14| A. I think probably since around 1987.
|00018-15| But, you know, it is not at that percent. It
|00018-16| changes for each level you are at. Just part of
|00018-17| the annual company incentive program.
|00018-18| Q. Has the incentive been 60 percent for
|00018-19| you since you've been executive vice president?
|00018-20| A. I think so. I think that's where I
|00018-21| started when I became executive vice president.
|00018-22| I think. But, you know, I'm not positive about
|00018-23| it.
|00018-24| Q. I'm assuming the different levels are
|00018-25| lower as you go down the corporate chain.

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|00019-01| A. That's right.
|00019-02| Q. Since you've been executive vice
|00019-03| president, have the annual company incentives
|00019-04| been met?
|00019-05| A. That would just be 1998, because I
|00019-06| wasn't an executive vice president in all of '97,

00019-07| and we don't have the results for '98 yet. But I
00019-08| don't think they are going to be met. It doesn't
00019-09| look like they are going to be.
00019-10| Q. Are the incentives profit based,
00019-11| sales based, gross, net? In other words, is it
00019-12| tied to sales?
00019-13| A. It changes. It has changed a little
00019-14| over time, but I would say in general what it is,
00019-15| it is the operating company contribution,
00019-16| sometimes cash flow. Usually cash flow is
00019-17| included, but not always. And then usually some
00019-18| market share number. So it's profit cash flow
00019-19| market share.
00019-20| Q. Of the tobacco company?
00019-21| A. The tobacco company.
00019-22| Q. So your incentive is not tied to RJR
00019-23| Tobacco business, it is tied to the tobacco
00019-24| company?
00019-25| A. The annual incentive program is tied

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00020-01| to the tobacco company.
00020-02| Q. If my math is correct, the way your
00020-03| current contract reads, at least with the annual
00020-04| company incentives, you can get another 180 some
00020-05| odd thousand dollars if the goal is met?
00020-06| A. That's right. And, that's not in the
00020-07| contract. If you are suggesting that's in the
00020-08| contract, it's not.
00020-09| Q. No, no, I thought it was. I
00020-10| appreciate your --
00020-11| A. Okay. No.
00020-12| Q. Are there percentages of the
00020-13| incentive that are awarded based on achieving
00020-14| percentages of the goals? In other words, if you
00020-15| get --
00020-16| A. Yes.
00020-17| Q. If you get halfway there, do you get
00020-18| 30 percent?
00020-19| A. Right. The scale varies each year.
00020-20| It is dependent on what is agreed to. It can be
00020-21| from zero on up, but it can be zero.
00020-22| Q. Right. Are there any other potential
00020-23| compensations that you can get, other than your
00020-24| base salary and your annual company incentive?
00020-25| A. Yes.

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00021-01| MR. KACZYNSKI: Wait until he finishes the
00021-02| question.
00021-03| BY MR. KRISTAL:
00021-04| Q. I kind of paused there so it was an
00021-05| understandable jump-in.
00021-06| A. Yes.
00021-07| Q. Why don't you just give me the
00021-08| universe of them and then we'll go back over
00021-09| them.
00021-10| A. There is usually, not always, you
00021-11| know, these things change over time, but usually
00021-12| there is a three year program where they'll come
00021-13| out with a program like -- let's say right now
00021-14| this year, that's for the next three years, and
00021-15| you evaluate the performance of the company over
00021-16| the next three years, and then that pays out
00021-17| based on a longer term company performance.

00021-18| Q. What is the percentage, the maximum
00021-19| percentage for that goal?
00021-20| A. Well, I couldn't possibly tell you
00021-21| because it is like a complicated formula, and it
00021-22| changes each year based on that three year
00021-23| program, and even if they granted one for that
00021-24| year -- I mean, it is -- I couldn't possibly.
00021-25| Q. Okay. Did I understand you

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00022-01| correctly, that the prior three year program
00022-02| period has just ended and you are about to begin
00022-03| a new three year program?
00022-04| A. The annual and the three year program
00022-05| will be evaluated in the first quarter for the
00022-06| previous year.
00022-07| Q. That's what I am saying. But do you
00022-08| expect an evaluation in the first quarter of 1999
00022-09| for the prior three year program that just ended?
00022-10| A. Yes, yes. Right.
00022-11| Q. Okay. As well as the 1998 annual?
00022-12| A. Annual program. And then there is
00022-13| also -- because you asked me --
00022-14| Q. No. I'm --
00022-15| A. Right. Okay. Then there is also --
00022-16| it is an executive program where you are provided
00022-17| a company car and either cash or you can use,
00022-18| instead of cash, you can use it for benefits like
00022-19| more insurance or -- I don't know, like fax
00022-20| machines or phones or things like that.
00022-21| Q. Kind of perks?
00022-22| A. Um-hum.
00022-23| Q. Noncash perks?
00022-24| A. Yes. Although, you can take it in
00022-25| cash, if you don't want to use it on perks.

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00023-01| Q. Is that -- is there a total dollar
00023-02| amount and then you can kind of divide it the way
00023-03| you see fit, between car, fax? What is the total
00023-04| dollar amount that's in that executive package or
00023-05| program?
00023-06| A. Mine, I would say is approximately
00023-07| 30,000, plus the company car. Because if you are
00023-08| in the program you get a company car, and then
00023-09| they like impute the value and you pay taxes on
00023-10| it.
00023-11| Q. So you pay for the taxes on the car?
00023-12| A. Right.
00023-13| Q. Based on whatever the value of the
00023-14| car is?
00023-15| A. Value of the car is.
00023-16| Q. And in addition to that, you can
00023-17| either get up to \$30,000 in cash or get a fax
00023-18| machine or something and then the value of that
00023-19| gets deducted from the 30,000 and you get the
00023-20| balance?
00023-21| A. That's correct.
00023-22| Q. Are there any other compensation
00023-23| things, programs?
00023-24| A. Yes. There is one other one. Last
00023-25| year -- this is not an ongoing thing, it is an

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00024-01| unusual circumstance. But last year, they put a
00024-02| program in place that is essentially a -- what I

00024-03 | would call stay on agreement. If you are willing
00024-04 | to stay for -- I forget how long it was. Then,
00024-05 | you know, you accrue money for staying with the
00024-06 | company.
00024-07 | Q. Have you agreed to that?
00024-08 | A. Yes.
00024-09 | Q. Do you agree to stay on for a certain
00024-10 | period?
00024-11 | A. No. It is just if you are there, you
00024-12 | earn the money. If you are not there, you don't.
00024-13 | Q. So it is kind of an incentive to keep
00024-14 | you?
00024-15 | A. It's an incentive to keep you.
00024-16 | Q. What is the financial arrangement; in
00024-17 | other words, if you stay a year?
00024-18 | A. You know, honestly I can't remember
00024-19 | the exact terms. It is not a year, though. I
00024-20 | think, it was a three year -- it was over three
00024-21 | years.
00024-22 | Q. Is it money or is it a combination of
00024-23 | money and --
00024-24 | A. No. It was money.
00024-25 | Q. Is it a percentage of salary or is

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00025-01 | there an actual dollar amount?
00025-02 | A. It was a dollar amount.
00025-03 | Q. So if you stay at RJR -- is it RJR
00025-04 | Tobacco or any RJR entity? In other words, could
00025-05 | you move somewhere else?
00025-06 | A. I think it is just tobacco, but then
00025-07 | I'm not really -- that's probably a legal
00025-08 | question. I don't even know.
00025-09 | Q. So if you stay for the duration of
00025-10 | the current three year program, you will get some
00025-11 | cash?
00025-12 | A. Um-hum. That's correct.
00025-13 | Q. Do you have a best estimate of what
00025-14 | that is? In other words, are we talking \$5,000
00025-15 | or 150, or more or less?
00025-16 | A. No, no, more. I could give you like
00025-17 | an estimate, but that would --
00025-18 | Q. Yeah. I'm not going to hold you to a
00025-19 | specific. I just want to know the parameters of
00025-20 | what we're talking about.
00025-21 | A. I think it would be somewhere around
00025-22 | 800,000 to a million.
00025-23 | Q. Are there any other incentives? In
00025-24 | other words, we've laid out a number of them --
00025-25 | A. I can't really think of anything else

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00026-01 | right now.
00026-02 | Q. Okay. Does your current contract
00026-03 | have a noncompete clause so that if you did
00026-04 | leave, you couldn't work for another tobacco
00026-05 | company or could you work for another tobacco
00026-06 | company with certain restrictions? Do you follow
00026-07 | me?
00026-08 | A. Yes. My current contract has a
00026-09 | noncompete in it, where I couldn't work -- I
00026-10 | believe it is in -- I would have to go back and
00026-11 | look at the definite language, but I believe it
00026-12 | is in the tobacco industry for, I think it is
00026-13 | three years.

00026-14| Q. What sort of pension plan do you have
00026-15| or does RJR provide?
00026-16| A. RJR has a pension plan.
00026-17| Q. Is it a combination of age and
00026-18| tenure?
00026-19| A. It depends. There are two different
00026-20| pension plans. It changed, and I don't remember
00026-21| how long ago this was, five or six years ago, and
00026-22| if you were under 40, which I was at the time,
00026-23| then you were put on the new pension plan. If
00026-24| you were over 40, you stayed on the old pension
00026-25| plan. So I'm not on the old pension plan and

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00027-01| that is age and service and has its own whole
00027-02| formula, which I don't really know that much
00027-03| about because I'm not even on it anymore.
00027-04| Q. But you have a little over 17 years
00027-05| of service now with RJR.
00027-06| A. 16 and a half, I think. Right.
00027-07| Q. July of '82. You are right. That's
00027-08| right. I'm sorry.
00027-09| When you hit 20 years or 30 years,
00027-10| does the pension plan vest or is it a
00027-11| combination -- your current plan that you are on,
00027-12| when you hit 50 and 25 years is a combination?
00027-13| A. No, no. It is the thing -- it is
00027-14| this portable thing. This is a new thing that a
00027-15| lot of companies are doing where you build-up
00027-16| pension benefits, and if you leave the company,
00027-17| you take it with you.
00027-18| Q. I see.
00027-19| A. The old plan was, I think, was more
00027-20| like that. The one I'm on is not.
00027-21| Q. So if I'm understanding what you are
00027-22| saying -- let me just say something and you can
00027-23| tell me if I'm understanding correctly.
00027-24| The older you are, the longer you
00027-25| have been with the company, the more you get to

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00028-01| take with you?
00028-02| A. Right. Because you've accrued more
00028-03| benefit.
00028-04| Q. So if you left now, you would get
00028-05| some pension, it is not as if you would not vest
00028-06| at all?
00028-07| A. That's correct. I'm fully vested in
00028-08| the benefits I've accrued, and if I stayed
00028-09| longer, I would accrue more benefits, and I would
00028-10| be vested in those.
00028-11| Q. Are one of the benefits of the
00028-12| pension plan a percentage of salary, your last
00028-13| salary, or the last couple of years average
00028-14| salary?
00028-15| A. You know, I'm not an expert on this,
00028-16| but I think how it works is, no, you just accrue
00028-17| so much because every so often they'll send a
00028-18| statement that says here is how many benefits
00028-19| you've accrued, here is how much you've accrued,
00028-20| and I don't think that has --
00028-21| Q. If you were to retire tomorrow, what
00028-22| kind of compensation would you get?
00028-23| A. What kind of pension, do you mean?
00028-24| Q. Yes.

|00028-25| A. I think mine is worth somewhere --
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|00029-01| approximately, 250 to 300,000.
|00029-02| Q. A year?
|00029-03| A. No. That's --
|00029-04| Q. The total?
|00029-05| A. The total value that would be
|00029-06| portable that I took with me.
|00029-07| Q. Is there a yearly pension?
|00029-08| A. No. That's your amount of money.
|00029-09| You take that with you, that's it.
|00029-10| Q. Does your husband collect any sort of
|00029-11| pension from RJR?
|00029-12| A. He was on the old plan and he's not
|00029-13| 55 yet.
|00029-14| Q. So when he becomes 55, will he get a
|00029-15| pension for his prior service with RJR?
|00029-16| A. He could. He doesn't think he is
|00029-17| going to start drawing it at 55, but he could.
|00029-18| Q. That would be his option?
|00029-19| A. It is his option.
|00029-20| Q. Does your husband -- you gave us a
|00029-21| number, I forgot what it was, for the stock,
|00029-22| approximately, that you own. Does that include
|00029-23| any stock that your husband owns in any RJR
|00029-24| entity, or is that Lynn Beasley stock? Do you
|00029-25| follow what I am asking?

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|00030-01| A. I do. I don't believe that he has any
|00030-02| ownership of stock in an individual account of
|00030-03| his or any joint account of ours beyond what I
|00030-04| have with the company. I don't believe that's
|00030-05| true.
|00030-06| Q. Your education, if I'm understanding
|00030-07| it is, you went -- you obtained an associates
|00030-08| degree at a two year college and then went to a
|00030-09| four year college for two years to finish up and
|00030-10| get your bachelor of arts. Am I reading this
|00030-11| correctly?
|00030-12| A. In the business school I got my
|00030-13| degree in finance as a bachelors of business
|00030-14| administration.
|00030-15| Q. From the University of Wisconsin?
|00030-16| A. Yes.
|00030-17| Q. What campus was that?
|00030-18| A. Madison. I mean, in Wisconsin,
|00030-19| Madison is, you know, other states are this way,
|00030-20| too. Madison is considered the University of
|00030-21| Wisconsin, and then every other branch, like the
|00030-22| Richmond center one, it is still part of the
|00030-23| University of Wisconsin system, but it is an
|00030-24| offshoot of the Madison campus.
|00030-25| Q. Am I correct, you started college in

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|00031-01| September of '77, and you graduated in May of
|00031-02| '79, with an associates degree?
|00031-03| A. That's right.
|00031-04| Q. Was there a major that is part of the
|00031-05| associates degree?
|00031-06| A. No.
|00031-07| Q. In other words, do you major in
|00031-08| something?
|00031-09| A. No.

00031-10| Q. How many credits was that? Do you
00031-11| know?
00031-12| A. No. I have no idea.
00031-13| Q. And then the next September,
00031-14| September of '79 for two academic years, four
00031-15| semesters, you attended the University of
00031-16| Wisconsin at Madison?
00031-17| A. I also attended it for graduate
00031-18| school.
00031-19| Q. I'm getting there. I'm just talking
00031-20| about college right now.
00031-21| A. Okay. Yes.
00031-22| Q. After graduating from University of
00031-23| Wisconsin with your bachelors of arts, the next
00031-24| semester you went to graduate school at the
00031-25| University of Wisconsin, right?

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00032-01| A. Yes. I got my business degree from
00032-02| the University of Wisconsin and then I went on to
00032-03| get my graduate degree. I majored in finance
00032-04| undergrad, and then I majored in marketing for
00032-05| graduate school, but they were both in business.
00032-06| Q. Was that a combined bachelors/masters
00032-07| program? In other words, when you started in
00032-08| September of '79 at Madison, were you in a
00032-09| program that after three years led to a masters,
00032-10| or was your intent when you started just to get
00032-11| your bachelors?
00032-12| A. Just to get my bachelors.
00032-13| Q. Did you write a masters thesis?
00032-14| A. No, I did not. It was not required
00032-15| in their program.
00032-16| Q. Was there any sort of paper or
00032-17| dissertation that you had to write as a
00032-18| requirement, or you just needed a certain number
00032-19| of credits?
00032-20| A. It was the credits.
00032-21| Q. The masters degree that you got was
00032-22| after two semesters of school, graduate school?
00032-23| A. That's correct.
00032-24| Q. The fall of 1981, and then the spring
00032-25| semester of '82?

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00033-01| A. Right.
00033-02| Q. Now you also -- am I reading this
00033-03| correctly, at the same time you worked part-time
00033-04| at the school as a research assistant?
00033-05| A. Yes.
00033-06| Q. Was that kind of a work-study program
00033-07| or separate?
00033-08| A. No. It was a special program that
00033-09| the school offered me, because I had not planned
00033-10| to go onto graduate school. I didn't have the
00033-11| money. A marketing professor asked me if I had
00033-12| the money, would I go to graduate school, and I
00033-13| said I would. And so they structured a program
00033-14| where I worked with a marketing professor in the
00033-15| school of business and gave me a fellowship to
00033-16| cover the tuition and my living expenses.
00033-17| Q. Other than attending classes and
00033-18| maintaining grades, were there any other
00033-19| requirements of this fellowship?
00033-20| A. Yes.

00033-21| Q. What did you have to do to fulfill
00033-22| the requirements?
00033-23| A. I worked specifically with a
00033-24| professor, helping him with his research.
00033-25| Q. What kind of research was this

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00034-01| professor doing?
00034-02| A. At the time he was --
00034-03| Q. That's what I am talking about.
00034-04| A. At the time he was working on the
00034-05| social security system.
00034-06| Q. Did you do any other research with
00034-07| that professor on the social security system,
00034-08| other than the social security system?
00034-09| A. There might have been something small
00034-10| he asked me to do, but that was the major thing
00034-11| we were working on.
00034-12| Q. Did you take any courses,
00034-13| undergraduate, in marketing?
00034-14| A. Yes.
00034-15| Q. How many courses did you take in
00034-16| marketing?
00034-17| A. I couldn't tell you. I would have to
00034-18| go back and look.
00034-19| Q. Did you take courses in advertising
00034-20| as an undergraduate?
00034-21| A. I don't remember what the exact title
00034-22| of the course was, but I'm sure it included
00034-23| advertising subjects.
00034-24| Q. What is the difference between a
00034-25| degree in finance and a degree in marketing?

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00035-01| A. Well, the degree in finance
00035-02| specializes you in the finance field, so if you
00035-03| are majoring in finance, there are many more
00035-04| requirements in the finance field, financial
00035-05| courses. If you take -- major in marketing, then
00035-06| you are going to have a curriculum that requires
00035-07| you to finish a number of marketing courses, so
00035-08| your curriculum is going to be heavily weighted
00035-09| towards marketing.
00035-10| Q. Did you ever teach anything related
00035-11| to marketing? In other words, did you teach any
00035-12| graduate class? Have you taught since you've
00035-13| graduated, in any academic setting?
00035-14| A. I haven't been a teacher, no.
00035-15| Q. I mean, have you guest lectured?
00035-16| Have you done anything like that?
00035-17| A. I have. I have gone to schools and
00035-18| given speeches. Is that what you mean or --
00035-19| Q. Well --
00035-20| A. Talked about marketing.
00035-21| Q. Okay. How many such times have you
00035-22| done that?
00035-23| A. Oh, gosh. I don't know. You know,
00035-24| the local technical school, I've been there, and
00035-25| couple of universities. It is -- I can't

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00036-01| remember the exact number over the years. But
00036-02| when they ask me to come over, I usually try and
00036-03| accommodate it.
00036-04| Q. What level? What education level;
00036-05| college, high school?

00036-06| A. I have primarily technical school,
00036-07| college.
00036-08| Q. What grade level is technical school?
00036-09| A. Well, that's after high school. You
00036-10| know, technical school is an alternative path
00036-11| versus a four year college.
00036-12| Q. Other than that?
00036-13| A. No. Other than that, no.
00036-14| Q. Did you say college in there?
00036-15| A. Yes.
00036-16| Q. What colleges have you spoken at?
00036-17| A. Well, the technical school. I think
00036-18| it was Forsyth Technical School, which I don't
00036-19| know if you call that a college. It is technical
00036-20| school. And then -- gosh, it has a been a number
00036-21| of years ago. I'm trying to remember the name of
00036-22| it. I just can't recall the name of it. It was
00036-23| a small college.
00036-24| Q. Again, without holding you to an
00036-25| exact year, how long has it been since you've
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00037-01| done that?
00037-02| A. I would say seven years, anyway.
00037-03| Q. When you were in the academic world,
00037-04| either undergraduate or graduate, did you take
00037-05| any courses that dealt with marketing,
00037-06| advertising, or promotion of cigarettes?
00037-07| A. I don't recall that we specifically
00037-08| talked about cigarettes. I mean, it is a
00037-09| possibility, but I don't recall that.
00037-10| Q. Did you ever do any research when you
00037-11| were either undergraduate or graduate, in that
00037-12| field, marketing, advertising and promotion of
00037-13| cigarettes?
00037-14| A. I don't recall any specific work on
00037-15| cigarettes.
00037-16| Q. Did you ever do any research on
00037-17| marketing, advertising or promotion of any
00037-18| consumer product when you were in school?
00037-19| A. Well, sure. In the courses we were
00037-20| studying consumer products. Is that what you
00037-21| mean?
00037-22| Q. Well, I mean actual -- your own
00037-23| research project as opposed to reading the text.
00037-24| A. Well, you know, we had courses where
00037-25| we did case studies and stuff. But I mean, did I
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00038-01| go and work for another company or --
00038-02| Q. Do any kind of research, surveys,
00038-03| questionnaires, focus groups.
00038-04| A. Oh, sure. Yes. When -- if you'll
00038-05| see in this 4-81 to 9-81, I worked for a
00038-06| marketing professor and he ran -- he was a
00038-07| marketing professor, but he had a separate
00038-08| business that was called Madison Survey Services,
00038-09| and I was working for him part-time and we were
00038-10| doing surveys and tabulating results, marketing
00038-11| research type of stuff.
00038-12| Q. That was part of your part-time work
00038-13| while you were in college?
00038-14| A. Yes.
00038-15| Q. Did you ever study smoking behavior?
00038-16| Why someone smokes, physiology of smoking,

00038-17| psychology of smoking, the social aspects of
00038-18| smoking? Did you ever study that?
00038-19| A. While I was in college you mean?
00038-20| Q. At anytime.
00038-21| A. Okay. Can you repeat the question
00038-22| again then?
00038-23| Q. Sure. I'm asking at anytime if you
00038-24| ever studied smoking behaviors. I'm including in
00038-25| that why somebody might start, behavioral aspects

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00039-01| of smoking, physiological aspects, psychological
00039-02| aspects. I'm not sure I said motivational
00039-03| aspects.
00039-04| A. I have read a lot of literature on it
00039-05| since I've been with the company, if that's what
00039-06| you mean. I mean, I'm not sure what you mean by
00039-07| studied. Obviously I've --
00039-08| Q. That's within what I am talking
00039-09| about. You've read literature on those subjects?
00039-10| A. Right. And of course I've been with
00039-11| the company for 16 and a half years, and we do
00039-12| research with smokers constantly, so I know a
00039-13| really lot about smokers because we talk to adult
00039-14| smokers. That's who we do research among. And
00039-15| focus groups, quantitative surveys, yeah, so in
00039-16| smoking behavior, I stay very well versed on it.
00039-17| Q. Has any part of that, either the
00039-18| literature you read or the research you've done
00039-19| through your work, involved the physiological
00039-20| aspects of smoking, pharmacological aspects of
00039-21| smoking or is it more the behavioral and
00039-22| psychological?
00039-23| A. Yeah. It is not the pharmacological.
00039-24| Q. Do you know what a literature review
00039-25| means, the term literature review? Let me tell

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00040-01| you what I mean by it so we don't have to play
00040-02| guessing games with definitions.
00040-03| A. Okay.
00040-04| Q. The way I'm using it, literature
00040-05| review is some sort of organized search of the
00040-06| published literature on a particular topic.
00040-07| Okay. Have you ever done that on any topic?
00040-08| Have you ever conducted a literature review on
00040-09| any topic?
00040-10| MR. KACZYNSKI: Ever?
00040-11| MR. KRISTAL: Yes.
00040-12| THE WITNESS: Oh, gosh. Yes, I'm sure I did
00040-13| because, you know, when we had to write papers
00040-14| for the courses and look at them. I mean, yes.
00040-15| I can't tell you the specific subjects, but
00040-16| definitely.
00040-17| BY MR. KRISTAL:
00040-18| Q. So you are familiar with the process,
00040-19| anyway?
00040-20| A. Right.
00040-21| Q. Would you use a computer, put in key
00040-22| words or was that not something that was
00040-23| happening back then?
00040-24| A. That was not happening.
00040-25| Q. So it was more of a manual search?

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00041-01| A. It was in the library.

00041-02| Q. Since you've graduated from graduate
00041-03| school in 1982, have you conducted that kind of
00041-04| organized literature review on any subject?
00041-05| A. I wouldn't say that, you know, I've
00041-06| gone to either the library and computer and drawn
00041-07| up every article written on the subject or book
00041-08| written on a subject. I can't think of -- know
00041-09| when I've done that. I certainly have asked
00041-10| research people to go and find out if there is
00041-11| things written about this or other internal
00041-12| company people. But have I done it myself?
00041-13| Q. Right.
00041-14| A. No. I would say not.
00041-15| Q. The times when you've asked somebody
00041-16| else to do it, did you ask them to, as an
00041-17| example, bring me all the published literature on
00041-18| topic A and then they would come back with a
00041-19| stack of articles on that topic, or was it more
00041-20| focused than that?
00041-21| A. You know, through the 16 and a half
00041-22| years, I'm sure it was somewhere in the middle.
00041-23| You know, it would be like they would be a screen
00041-24| for me, but bring me back a good amount on this
00041-25| subject or do you know of good books written on
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00042-01| this subject and they'll go and get me books or
00042-02| that sort of thing.
00042-03| Q. Right.
00042-04| A. Do you know any good articles that
00042-05| have been written on this.
00042-06| Q. So it wasn't one specific article,
00042-07| but it wasn't bring me the universe.
00042-08| A. Right. I would say that's closer.
00042-09| Someplace in the middle.
00042-10| Q. On what subjects did you conduct that
00042-11| kind of middle ground or have somebody conduct on
00042-12| your behalf that middle ground search?
00042-13| A. Several subjects, you know, in
00042-14| marketing and advertising. It would be, you
00042-15| know, we might be looking at what new products
00042-16| have been successful. So we go out and look and
00042-17| say how did they do it.
00042-18| Q. Okay.
00042-19| A. Or what like old brands -- there was
00042-20| this time when we were saying what old brands
00042-21| have been repositioned successfully and we look
00042-22| at that. So a lot of marketing subjects in
00042-23| addition, of course, to the literature on the
00042-24| effects of marketing and advertising on starting
00042-25| to smoke -- obviously that area as well.
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00043-01| Q. When did the review of the last
00043-02| subject you just said, literature on marketing
00043-03| and advertising on the effects of starting
00043-04| smoking, is it something like that?
00043-05| A. Close, yes.
00043-06| Q. Whatever the last topic was.
00043-07| A. Right.
00043-08| Q. When did that occur?
00043-09| A. I would say I started that back in
00043-10| probably about 1990, '91.
00043-11| Q. What was the reason you started that
00043-12| search?

00043-13| A. That's when, as I best can recall, I
00043-14| was at a higher level in the company, and as I --
00043-15| you know, I'm just trying to recall
00043-16| approximately, but I think that the Federal Trade
00043-17| Commission in 1990, began investigating in
00043-18| general cigarette companies' youth marketing
00043-19| practices, and that's when I began to start
00043-20| familiarizing myself with the literature and then
00043-21| as that proceeded, I think it was in 1991, they
00043-22| began a more specific investigation of the Joe
00043-23| Camel campaign, and then I obviously continued to
00043-24| familiarize myself with what was being written
00043-25| and concluded in the literature.

----- PAGE00044 -----

00044-01| Q. When was the last such time that
00044-02| you've performed that kind of literature search
00044-03| on that subject?

00044-04| A. Well, I mean, it is an ongoing thing
00044-05| now, obviously.

00044-06| Q. Do you have a file, a compilation, a
00044-07| stack of the articles that you've reviewed on
00044-08| that subject since 1990 or 1991?

00044-09| A. I can't tell you that I have every
00044-10| one. I have a file that has quite a few articles
00044-11| in it, but I don't -- I cannot claim every one is
00044-12| in there.

00044-13| Q. No. And nor was my question really
00044-14| that specific, although I did ask.

00044-15| How big is this group? Either can
00044-16| you tell me the number of articles or is it a
00044-17| file drawer, a box, a roomful?

00044-18| A. It is not a roomful.

00044-19| Q. Okay. Bigger than a breadbox?

00044-20| A. Umm. I don't know. Just saying like
00044-21| a stack of paper, how big a stack of paper?

00044-22| Q. Yes. In other words, I have these
00044-23| banker boxes. Would it be a banker's box worth?

00044-24| A. Yeah. It might.

00044-25| Q. Are these the documents that might be

----- PAGE00045 -----

00045-01| a banker's box worth, are these all published
00045-02| articles or do they include internal memorandum,
00045-03| internal documents? What is the --

00045-04| A. Published things like government
00045-05| studies, published articles. That sort of thing.

00045-06| Q. In the group that we're talking about
00045-07| of documents, are there any internal documents of
00045-08| any tobacco company?

00045-09| A. I don't think so.

00045-10| Q. So everything in that box would be
00045-11| available to the public?

00045-12| A. Right. That's kind of my stuff I've
00045-13| read. Publicly published stuff.

00045-14| Q. Who -- strike that.

00045-15| What are the sources from who you
00045-16| gathered -- did you actually go out and gather
00045-17| the articles yourself? Did you ask a colleague
00045-18| of yours? Did the lawyers representing RJR give
00045-19| you them? Some combination of all of that?

00045-20| A. It is a combination of many things.
00045-21| You know, I might hear about an article in the
00045-22| news and I'll go ask either our legal department
00045-23| or our external department, can you get a copy of

|00045-24| this.
|00045-25| Sometimes because I've been involved
----- PAGE00046 -----
|00046-01| in litigation now, it will be the other side says
|00046-02| here is some articles or in depositions somebody
|00046-03| comes up with some articles and I ask to have
|00046-04| them so I can read them. The government data,
|00046-05| when it comes out and it is in the news, I go and
|00046-06| ask about that so I am familiar with what that
|00046-07| means. So -- and then sometimes people provide
|00046-08| them to me because like our external group will
|00046-09| say, well, This was in the news, we thought you
|00046-10| should have it. So it is a big combination of
|00046-11| that.
|00046-12| Q. Have you ever done any literature
|00046-13| review on child psychology, adolescence
|00046-14| psychological development, those kinds of topics?
|00046-15| A. Ever in my life?
|00046-16| Q. Yes.
|00046-17| A. I can't really recall. In college,
|00046-18| you know --
|00046-19| Q. Other than that?
|00046-20| A. Okay. Other than in college?
|00046-21| Q. Right.
|00046-22| A. No. I would say no.
|00046-23| Q. The documents that we're referring to
|00046-24| that may fill a banker's box, do those documents
|00046-25| give you the fund of knowledge upon which you
----- PAGE00047 -----
|00047-01| intend to give some expert opinion in this case?
|00047-02| A. It is certainly part of it.
|00047-03| Q. In other words, that box plus other
|00047-04| things?
|00047-05| A. Right. It is my 16 and a half years
|00047-06| marketing cigarettes.
|00047-07| Q. Okay. I didn't mean to mean only
|00047-08| that box.
|00047-09| A. Okay.
|00047-10| Q. I'm just asking you if that box is
|00047-11| part of the mix.
|00047-12| A. Oh, yes. Part of the mix.
|00047-13| Q. Are you relying on those documents in
|00047-14| part for whatever opinions you may be asked to
|00047-15| give?
|00047-16| A. I would say over the time of the
|00047-17| things I've read, yes. Yes, there is a part of
|00047-18| what I am relying on.
|00047-19| Q. Now you were getting into, and I kind
|00047-20| of interrupted, and I apologize, the other things
|00047-21| you are relying on. One is your 16 years of
|00047-22| experience. Are there other sets or another set
|00047-23| of the documents that are not publicly available
|00047-24| published literature in that box that you are
|00047-25| also relying on?
----- PAGE00048 -----
|00048-01| A. Well, certainly there are company
|00048-02| documents that outline our policies and
|00048-03| procedures and things that have been done, so
|00048-04| there are our company documents.
|00048-05| Q. Anything else in terms of categories
|00048-06| of documents? In other words, we have the almost
|00048-07| banker's box of publicly available literature.
|00048-08| The company documents you've referenced, your

00048-09 | experience. Is there another group of documents
00048-10 | that -- in other words, other companies'
00048-11 | documents?
00048-12 | A. Oh, no. I don't have other
00048-13 | companies' documents.
00048-14 | Q. The documents that are R. J. Tobacco
00048-15 | Company documents, do you have them segregated
00048-16 | somewhere? In other words, at home, in your
00048-17 | office?
00048-18 | A. No.
00048-19 | Q. Do you have a list of those
00048-20 | documents?
00048-21 | A. Well, we provided a list of reliance
00048-22 | materials, if that's what you mean.
00048-23 | Q. Okay.
00048-24 | A. Obviously my total experience at
00048-25 | Reynolds, the many documents I have seen, the

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00049-01 | many people I have interacted with, forms my
00049-02 | opinion so, I mean, if you wanted to be
00049-03 | completely broad, you would say obviously
00049-04 | everything I have been exposed to at Reynolds
00049-05 | forms my opinion. I don't have a list of every
00049-06 | document I've ever been exposed to.
00049-07 | Q. The company documents, where did you
00049-08 | get them from?
00049-09 | A. Well, the company documents either --
00049-10 | usually in the course of litigation. I mean,
00049-11 | obviously I've seen lots of company documents
00049-12 | over my 16 and a half years, those just in the
00049-13 | routine course of business. Then -- that's one
00049-14 | set of company documents. Obviously it is the
00049-15 | nature of our business.
00049-16 | Q. Sure.
00049-17 | A. Then there is another set of company
00049-18 | documents which are more historical in nature,
00049-19 | relate to things that it was not created by me or
00049-20 | I wasn't copied on it so I wasn't exposed to it
00049-21 | in the routine course of business, but over the
00049-22 | last, probably seven years of being involved with
00049-23 | cases and litigation, they have come up, these
00049-24 | documents, or I have asked the lawyers to say,
00049-25 | well, if one of the things that the other side is

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00050-01 | alleging is this, can we do a search on, you
00050-02 | know, company documents that relate to this
00050-03 | subject. Things like that.
00050-04 | Q. Have you ever conducted that search?
00050-05 | A. No, sir.
00050-06 | Q. Have the lawyers, after you've made
00050-07 | that request, come back to you with documents?
00050-08 | A. Yes.
00050-09 | Q. I'm assuming you are aware there is a
00050-10 | document depository in Minnesota involving
00050-11 | tobacco company documents, RJR and others?
00050-12 | A. Right. That says -- I'm sorry.
00050-13 | That's as a result of the settlement in Minnesota
00050-14 | that a depository is being created.
00050-15 | Q. Right. Are you aware that you can
00050-16 | access the index to the documents on the
00050-17 | Internet?
00050-18 | A. I may have heard that.
00050-19 | Q. Have you ever attempted to access the

00050-20 | documents either by the Internet or going to the
00050-21 | depository?
00050-22 | A. I have to admit, I'm pretty
00050-23 | technologically backwards. I've never been on
00050-24 | the Internet.
00050-25 | Q. So I take it the answer is no?

----- PAGE00051 -----

00051-01 | A. No.
00051-02 | Q. Have you ever done anything yourself
00051-03 | to research a subject that is involved in
00051-04 | litigation that you are involved in?
00051-05 | A. Well, sure. I've worked with our
00051-06 | lawyers to do that.
00051-07 | Q. Meaning asking them to get things?
00051-08 | A. Yes. Working on it, yes.
00051-09 | Q. Well, do you know what percent of the
00051-10 | documents on a given topic that the lawyers
00051-11 | representing RJR have given you is of the total
00051-12 | universe of documents on that topic?
00051-13 | MR. KACZYNSKI: Objection, vague.
00051-14 | THE WITNESS: Yeah, I don't --
00051-15 | BY MR. KRISTAL:
00051-16 | Q. In other words, when you asked the
00051-17 | lawyers could you get me documents on subject A
00051-18 | and they come back with some documents, do you
00051-19 | know whether that represents some, all --
00051-20 | A. I don't know as I've ever asked for
00051-21 | all of anything. Like I remember -- I'll just
00051-22 | give you an example, and then this is what I
00051-23 | mean, which is, you know, one of these
00051-24 | allegations is we don't care whether our
00051-25 | trademarks are used on kid's things or not, which

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00052-01 | is absolutely untrue and has never been true
00052-02 | since I've been with the company, and I knew
00052-03 | there were many, many instances where we had
00052-04 | followed up with companies on that and I said,
00052-05 | you know, I would like some examples of those
00052-06 | instances where we followed up. You know, so it
00052-07 | is that sort of thing.
00052-08 | Q. Have you ever asked them to look into
00052-09 | that general subject, to see if there were
00052-10 | documents to the contrary?
00052-11 | A. What? That there would be something
00052-12 | on the file that we didn't follow-up on? Is that
00052-13 | what you mean?
00052-14 | Q. If there was some approval on a logo
00052-15 | on a toy, that there was some approval of a
00052-16 | trademark on something.
00052-17 | A. Oh, sure. They looked for that kind
00052-18 | of thing, too.
00052-19 | Q. How do you know that?
00052-20 | A. Because we talked about it,
00052-21 | obviously.
00052-22 | Q. So the lawyers told you they did
00052-23 | that?
00052-24 | A. Right. I mean, when the lawyers and
00052-25 | I talk. We'll be like, you know, is there any

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00053-01 | instances, is there a problem. I want to know
00053-02 | that.
00053-03 | Q. Right.
00053-04 | VIDEOTAPE OPERATOR: We're going off the

00053-05 | record at 10:10 a.m.
00053-06 | (Recess taken.)
00053-07 | VIDEOTAPE OPERATOR: We're back on the
00053-08 | record at 10:23 a.m.
00053-09 | MR. KRISTAL: For the record, I do request
00053-10 | the almost banker's box full of published
00053-11 | articles and research and my right to reconvene
00053-12 | the deposition after I receive them.
00053-13 | MR. KACZYNSKI: Write us a letter. We'll
00053-14 | respond appropriately.
00053-15 | THE WITNESS: I would like to clarify, too,
00053-16 | what I said. I mean, it would fit in that box.
00053-17 | I don't know if it would fill it up or not. I
00053-18 | don't know what the exact size of the stack looks
00053-19 | like.
00053-20 | BY MR. KRISTAL:
00053-21 | Q. That's fine.
00053-22 | A. Okay. So --
00053-23 | Q. The not more than a banker's box.
00053-24 | A. It is not bigger than that box.
00053-25 | Q. Have you ever attended a teenage

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00054-01 | marketing seminar, a marketing seminar relating
00054-02 | to teenagers?
00054-03 | A. No.
00054-04 | Q. Have you ever done any research or
00054-05 | focus group on teenagers of any kind?
00054-06 | A. No.
00054-07 | Q. Let me mark as Exhibit 2, an article
00054-08 | by a gentleman named Richard Mizerski,
00054-09 | M-I-Z-E-R-S-K-I.
00054-10 | (Deposition Exhibit 2 was marked
00054-11 | for identification and is annexed hereto.)
00054-12 | BY MR. KRISTAL:
00054-13 | Q. The title of the article is, The
00054-14 | Relationship Between Cartoon Trade Character
00054-15 | Recognition and Attitude Toward Product Category
00054-16 | in Young Children. And this is from the Journal
00054-17 | of Marketing, October 1995. Have you read this
00054-18 | article before?
00054-19 | A. Yes, I have.
00054-20 | Q. If you could just -- we're going to
00054-21 | get into the article in a little while, but if
00054-22 | you could just turn to the references on page --
00054-23 | beginning on Page 69 of the article. It is the
00054-24 | last two pages, the reference section. The
00054-25 | reference to Baxter, do you see that? These are

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00055-01 | alphabetical. I'll keep going in alphabetical
00055-02 | order, although not each one of them. Do you see
00055-03 | the Baxter reference?
00055-04 | A. Yes, I do.
00055-05 | Q. That's in a journal called the
00055-06 | Journal of Advertising Research. Do you see
00055-07 | that?
00055-08 | A. Yes, I do.
00055-09 | Q. Do you subscribe to that journal?
00055-10 | A. No, I do not.
00055-11 | Q. Have you ever read that journal, any
00055-12 | article out of that journal?
00055-13 | A. I may have. I don't know.
00055-14 | Q. Have you ever written any articles
00055-15 | for that journal?

00055-16| A. No, I have not.
00055-17| Q. The next reference is to -- the last
00055-18| name is Belch, B-E-L-C-H. And it is a book
00055-19| entitled Introduction To Advertising and
00055-20| Promotion In Integrated Marketing Communications
00055-21| Perspective. Do you own that textbook?
00055-22| A. I don't think so.
00055-23| Q. Have you ever read any portion of
00055-24| that textbook?
00055-25| A. I can't be sure. You know, obviously

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00056-01| it is possible. Let's see.
00056-02| Q. Well, as you sit here today, you
00056-03| can't say whether you have or you haven't?
00056-04| A. I don't think so, but.....
00056-05| Q. The next reference is to an article.
00056-06| The lead author is Belk, B-E-L-K, and that's in
00056-07| the Journal of Consumer Research. Do you
00056-08| subscribe to that journal?
00056-09| A. No.
00056-10| Q. Have you ever read any articles from
00056-11| that journal?
00056-12| A. I may have.
00056-13| Q. Can you tell me -- are you saying you
00056-14| may because -- you don't know one way or the
00056-15| other?
00056-16| A. I'm just not sure.
00056-17| Q. Have you ever written any articles
00056-18| for that journal?
00056-19| A. No, I have no.
00056-20| Q. The next citation is to Bornstein is
00056-21| the author, and it is an article in something
00056-22| called the Psychological Bulletin. Do you
00056-23| subscribe to that bulletin?
00056-24| A. No.
00056-25| Q. Have you ever written anything for

----- PAGE00057 -----

00057-01| that bulletin?
00057-02| A. No, I have not.
00057-03| Q. Do you know -- can you think of any
00057-04| article you've ever read from that bulletin?
00057-05| A. I don't recall.
00057-06| Q. And in the upper right-hand corner
00057-07| there is something referenced to Callcott,
00057-08| C-A-L-L-C-O-T-T. Do you see that?
00057-09| A. Yes.
00057-10| Q. That article is in something called
00057-11| the Proceedings of the American Academy of
00057-12| Advertising. Do you see that?
00057-13| A. Yes, I do.
00057-14| Q. Do you know what the American Academy
00057-15| of Advertising is?
00057-16| A. No.
00057-17| Q. I take it then that you don't belong
00057-18| to the American Academy of Advertising.
00057-19| A. No.
00057-20| Q. Have you ever attended any
00057-21| proceedings of the American Academy of
00057-22| Advertising?
00057-23| A. I don't believe so.
00057-24| Q. Have you ever received any of the
00057-25| journals called Proceedings of the American

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00058-01 Academy of Advertising?
00058-02 A. I don't think so.
00058-03 Q. Have you ever written anything for
00058-04 the American Academy of Advertising?
00058-05 A. No, I have not.
00058-06 Q. If you drop down a couple of
00058-07 references, there is one there to Donohue,
00058-08 D-O-N-O-H-U-E.
00058-09 A. Yes.
00058-10 Q. Excuse me -- am I going too fast? Is
00058-11 this all right?
00058-12 It is entitled Journal of Marketing.
00058-13 Do you see that?
00058-14 A. Yes, I do.
00058-15 Q. Do you subscribe to the Journal of
00058-16 Marketing?
00058-17 A. No, I do not.
00058-18 Q. Can you tell me any article that
00058-19 you've ever read from the Journal of Marketing?
00058-20 A. I have read articles from the Journal
00058-21 of Marketing. I think that -- let me see where
00058-22 this was published in. It might have been the
00058-23 Journal of Marketing.
00058-24 Q. Yes, it is. So there we have it. So
00058-25 Exhibit 2 is an article from the Journal of

----- PAGE00059 -----

00059-01 Marketing. Okay.
00059-02 A. Yes.
00059-03 Q. And you have read that?
00059-04 A. Yes.
00059-05 Q. Can you think of any others?
00059-06 A. You know, clearly I may have. I
00059-07 would have to go back and look what they were
00059-08 published in. I don't have that down by memory.
00059-09 Q. Do you recall, and I can articulate
00059-10 them for you because it may not be fair -- you
00059-11 may not be able to answer this question. Of the
00059-12 articles that I have -- the references that I've
00059-13 just gone over with you; Baxter, Belch, Belk,
00059-14 Bornstein, Callcott and now Donohue, the ones we
00059-15 were just having some question and answer on,
00059-16 have you read any of those?
00059-17 A. You know, I can't be sure. I don't
00059-18 think so.
00059-19 Q. If you drop down in the right-hand
00059-20 column to Gordon, G-O-R-D-O-N, there is a
00059-21 citation to an article in something called the
00059-22 Journal of Personality and Social Psychology. Do
00059-23 you subscribe to that journal?
00059-24 A. No, I do not.
00059-25 Q. Can you tell me the name of any

----- PAGE00060 -----

00060-01 article you've ever read from that journal?
00060-02 A. I just can't recall.
00060-03 Q. Have you ever written anything for
00060-04 that journal?
00060-05 A. No, I have not.
00060-06 Q. Have you ever read the citation --
00060-07 the reference here to the Gordon article?
00060-08 A. I don't believe so.
00060-09 Q. Dropping down to Hoffman, it is a
00060-10 book entitled the Handbook of Motivation and
00060-11 Cognition. Do you own that book?

00060-12| A. No.
00060-13| Q. Have you ever read anything from that
00060-14| book?
00060-15| A. I do not believe so.
00060-16| Q. The next one, dropping down
00060-17| Kobasigawa, K-O-B-I-S-I-G-A-W-A. It is a
00060-18| publication entitled perspectives in the
00060-19| Development of Memory and cognition. Have you
00060-20| ever read anything from that journal or book? Do
00060-21| you know if it is a journal or book?
00060-22| A. I don't.
00060-23| Q. Have you ever read anything from
00060-24| either the book or that journal?
00060-25| A. I don't recall.

----- PAGE00061 -----

00061-01| Q. Have you ever written anything for
00061-02| that?
00061-03| A. No, I have not.
00061-04| Q. If you turn to the next page, the
00061-05| left-hand column, Macklin, M-A-C-K-L-I-N. Do you
00061-06| see that?
00061-07| A. Yes, I do.
00061-08| Q. And there is an article in the
00061-09| Journal of Consumer Affairs. Have you ever read
00061-10| anything from that journal?
00061-11| A. I don't recall.
00061-12| Q. Have you ever written anything for
00061-13| that journal?
00061-14| A. No, I have not.
00061-15| Q. With respect to the Macklin article
00061-16| we're talking about and the Gordon, Hoffman and
00061-17| Kobasigawa, I take it when you say you can't
00061-18| recall reading anything from those citations, you
00061-19| are including that article itself? In other
00061-20| words, have you ever read the Gordon journal
00061-21| article, the Hoffman journal article, Kobasigawa
00061-22| article?
00061-23| A. Can we just go back to them? Can you
00061-24| tell me what you are asking?
00061-25| Q. Well, I've kind of been asking you if

----- PAGE00062 -----

00062-01| you've read anything from that particular journal
00062-02| or book and you are saying you don't recall. I
00062-03| have neglected to ask you whether you read that
00062-04| specific reference. Do you follow what I am
00062-05| saying?
00062-06| A. I do.
00062-07| Q. And so my question is with respect to
00062-08| Gordon, Hoffman, Kobasigawa and now Macklin, have
00062-09| you specifically read any of those articles that
00062-10| are cited there?
00062-11| A. I don't think so.
00062-12| Q. McNeal is the next cite after
00062-13| Macklin, M-c-N-E-A-L. It is a book entitled
00062-14| Children As consumers: Insight and Implications.
00062-15| Do you see that?
00062-16| A. Yes, I do.
00062-17| Q. Have you ever read that book?
00062-18| A. No.
00062-19| Q. The next one down, Naples. There is
00062-20| a book entitled Effective Frequency: The
00062-21| Relationship Between Frequency and Advertising
00062-22| Effectiveness. Have you ever read that book?

00062-23| A. I don't know. I mean, it is
00062-24| possible. We belong to the Association of
00062-25| National Advertisers, and I read materials from
----- PAGE00063 -----

00063-01| them and I just don't recall.
00063-02| Q. Do you ever recall reading this
00063-03| particular -- strike that.
00063-04| Next one is Norman, N-O-R-M-A-N.
00063-05| Journal of Applied Social Psychology. Do you
00063-06| recall ever reading anything from that book? I'm
00063-07| sorry, that journal.
00063-08| A. I don't recall.
00063-09| Q. Have you ever read the specific
00063-10| article that's referenced there,
00063-11| Self-Presentation, Reasoned Action and
00063-12| Adolescents' Decisions To Smoke Cigarettes?
00063-13| A. I don't think so.
00063-14| Q. Have you ever written anything for
00063-15| the Journal of Applied Psychology?
00063-16| A. No, I have not.
00063-17| Q. The next reference is to -- I'm not
00063-18| sure I'm pronouncing it correctly, Oei, O-E-I.
00063-19| Something an article in the International Journal
00063-20| of the Addictions. Have you ever read anything
00063-21| from that journal?
00063-22| A. I don't recall reading any. It is
00063-23| possible, but I don't recall.
00063-24| Q. Have you ever read the specific
00063-25| article referenced here, Attitudes Towards
----- PAGE00064 -----

00064-01| Smoking in 7 to 9-year-old Children?
00064-02| A. I don't think so.
00064-03| Q. Have you ever written anything for
00064-04| that journal?
00064-05| A. No, I have not.
00064-06| Q. The next is a book, Piaget,
00064-07| P-I-A-G-E-T. Readings In Child Development and
00064-08| Psychology. Have you ever read that book?
00064-09| A. No, I have not.
00064-10| Q. Do you know who Piaget is?
00064-11| A. No.
00064-12| Q. The next reference is to Quarforth,
00064-13| Q-U-A-R-F-O-R-T-H, and it is an article in the
00064-14| Journal of Communications. Have you ever read
00064-15| anything in the Journal of Communications?
00064-16| A. I may have. I don't recall.
00064-17| Q. Did you ever read the specific
00064-18| Quarforth article cited here, Children's
00064-19| Understanding of the Nature of the Television
00064-20| Characters?
00064-21| A. I don't think so.
00064-22| Q. Have you ever written anything for
00064-23| the Journal of Communications?
00064-24| A. No, I have not.
00064-25| Q. The next cite is to Raju, R-A-J-U.
----- PAGE00065 -----

00065-01| It is in a book called Current Issues and
00065-02| Research In Advertising. Have you ever read
00065-03| anything from that journal or book?
00065-04| A. No.
00065-05| Q. I take it then you haven't read the
00065-06| specific article then entitled Advertising To
00065-07| Children: Findings and Implications.

00065-08| A. No.

00065-09| Q. If that's a journal, have you ever

00065-10| written for the current issues in Research and

00065-11| Advertising?

00065-12| A. No.

00065-13| Q. The next cite is something called

00065-14| Reeves, R-E-E-V-E-S. It comes from the Journal

00065-15| of Human Communication Research. Have you ever

00065-16| read anything from that journal?

00065-17| A. No. Well, I don't know for sure if I

00065-18| ever read anything from the journal. I'm sorry,

00065-19| I was responding to have I ever read that

00065-20| specific.

00065-21| Q. I appreciate that. I know this is --

00065-22| we're almost done with this line.

00065-23| So you don't recall whether you read

00065-24| anything generally, but you specifically did not

00065-25| read the Reeves article entitled Children's

----- PAGE00066 -----

00066-01| Perception of Television Characters?

00066-02| A. That's right.

00066-03| Q. Have you ever written anything for

00066-04| the Journal of Human Communications Research?

00066-05| A. No, I have not.

00066-06| Q. The next column -- there is a long

00066-07| dash there. Do you see that?

00066-08| A. Yes.

00066-09| Q. And then there is an article by

00066-10| Sternthal, S-T-E-R-N-T-H-A-L, in the Journal of

00066-11| Marketing Research. Have you ever read anything

00066-12| from the Journal of Marketing Research?

00066-13| A. Probably. I mean, I can't recall

00066-14| specifically, but probably.

00066-15| Q. Have you ever read that specific

00066-16| article, Attitude Behavior Consistency In

00066-17| Children's Responses To Television Advertising?

00066-18| A. No, I have not.

00066-19| Q. Have you ever written anything for

00066-20| the Journal of Marketing Research?

00066-21| A. No, I have not.

00066-22| Q. Next cite, Stutts, S-T-U-T-T-S,

00066-23| Journal of Advertising. Have you ever read

00066-24| anything in that journal?

00066-25| A. Yes.

----- PAGE00067 -----

00067-01| Q. Have you read this particular

00067-02| article, Can Young Children Understand

00067-03| Disclaimers In Television Commercials?

00067-04| A. I don't think so, no.

00067-05| Q. Have you ever written anything for

00067-06| that journal?

00067-07| A. No.

00067-08| Q. Are you able to recall either the

00067-09| author or the title or the general subject of

00067-10| whatever article or articles you have read from

00067-11| the Journal of Advertising?

00067-12| A. I think one was Henke. I think that

00067-13| was in the Journal of Advertising, if I'm not

00067-14| mistaken. There was a Henke article I read.

00067-15| Q. H-E-N-K-E?

00067-16| A. H-E-N-K-E.

00067-17| Q. What was the subject of that Henke

00067-18| article?

00067-19| A. It was recognition by young children
00067-20| of trade characters and their attitudes and how
00067-21| it was specifically about the Joe Camel campaign,
00067-22| and how young children -- can they recognize it
00067-23| and when they recognize it, what is their
00067-24| attitudes towards smoking, and she studied it and
00067-25| found that with young children, while recognition

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00068-01| is of the Joe Camel character is high, regardless
00068-02| of recognition, attitudes towards smoking are
00068-03| negative, it doesn't matter if they have
00068-04| recognition of it or not. Overwhelmingly, like
00068-05| 96 percent held negative attitudes towards
00068-06| smoking, regardless of recognition of the Joe
00068-07| Camel character.

00068-08| Q. Do you know Henke's background?

00068-09| A. I believe she's a marketing professor
00068-10| at the University of New Hampshire, I believe.

00068-11| Q. Do you know who funded her study?

00068-12| A. I would have to go back and look. I
00068-13| don't recall.

00068-14| Q. Under where the dash is under Ward,
00068-15| W-A-R-D.

00068-16| A. Yes.

00068-17| Q. And in the Journal of Advances In
00068-18| Consumer Research, have you ever read anything in
00068-19| that journal?

00068-20| A. Oh, I see. I don't recall.

00068-21| Q. Have you ever read that specific
00068-22| article?

00068-23| A. I don't believe so.

00068-24| Q. Have you ever written anything for
00068-25| that journal?

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00069-01| A. No, I have not.

00069-02| Q. I'm not sure if I asked you this, and
00069-03| I apologize if I have. But going back to the
00069-04| earlier one, have you ever written anything for
00069-05| the Journal of Advertising?

00069-06| A. No, I haven't.

00069-07| Q. There is another cite to Ward and
00069-08| other authors, a book called How Children Learn
00069-09| To Buy. Do you see that?

00069-10| A. Yes. I see that.

00069-11| Q. Have you ever read that book?

00069-12| A. I don't think so, no.

00069-13| Q. Am I correct that you estimate the
00069-14| media placement expenditures for the Joe Camel
00069-15| campaign between 1987 and 1997, at a range of
00069-16| between 30 million and \$60 million a year?

00069-17| A. Could you say like the year? Say the
00069-18| question again.

00069-19| Q. Yeah. I'm trying to find out with
00069-20| respect to all media placement, that's one,
00069-21| relating to the Joe Camel cigarette advertising
00069-22| campaign from the years 1987 to 1997, the
00069-23| estimate of the expenditures.

00069-24| MR. KACZYNSKI: Object to the form.

00069-25| BY MR. KRISTAL:

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00070-01| Q. And in the past -- I can show you if
00070-02| you need to refresh your recollection, in the
00070-03| Mangini deposition, you testified that the

00070-04 | expenditures that you estimated were between 30
00070-05 | million to \$60 million a year.
00070-06 | A. For media placement?
00070-07 | Q. Yes.
00070-08 | A. Do you have that?
00070-09 | Q. Yes.
00070-10 | A. Can you show me that?
00070-11 | Q. Absolutely. Why don't we go off the
00070-12 | record for a minute.
00070-13 | VIDEOTAPE OPERATOR: We're going off the
00070-14 | record at 10:41 a.m.
00070-15 | (Recess taken.)
00070-16 | VIDEOTAPE OPERATOR: We're back on the
00070-17 | record at 10:50 a.m.
00070-18 | (Deposition Exhibit 3 was marked for
00070-19 | for identification and is annexed hereto.)
00070-20 | BY MR. KRISTAL:
00070-21 | Q. Just to inform the folks who may be
00070-22 | watching this and for purposes of the
00070-23 | stenographic record, while we were off the
00070-24 | record, I showed you two things. One was a
00070-25 | portion of your deposition testimony in the

----- PAGE00071 -----

00071-01 | Mangini, M-A-N-G-I-N-I case, dated May 29, 1997.
00071-02 | And did you have an opportunity to read about
00071-03 | four or five, six pages or so of that?
00071-04 | A. Yes, I did.
00071-05 | Q. The other thing that we did off the
00071-06 | record is, I marked as Exhibit 3, a document
00071-07 | which on the first page says Camel, underlined,
00071-08 | and then underneath it purpose and the beginning
00071-09 | Bates number is 50764, and I had directed your
00071-10 | attention to the next to the last page, which
00071-11 | ends in Bates number 5588. Correct?
00071-12 | A. Yes.
00071-13 | Q. At least that's what we did?
00071-14 | A. Yes. 50 -- what did you say?
00071-15 | Q. 507645578 is the first Bates number,
00071-16 | correct?
00071-17 | A. Yes. That's right.
00071-18 | Q. When we went off the video record, I
00071-19 | had asked you if you had estimated that for media
00071-20 | placement for the Joe Camel campaign, between
00071-21 | 1987 to 1997, you had estimated that the range of
00071-22 | expenditures was between 30 million and \$60
00071-23 | million per year. Now having read your testimony
00071-24 | from about, I guess, a year and a half ago, does
00071-25 | that help you recall that that was the estimate

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00072-01 | you gave?
00072-02 | A. Yes.
00072-03 | Q. Is that estimate still in the range
00072-04 | of expenditures?
00072-05 | A. I think it is a reasonable range.
00072-06 | You know, a year might fall out it.
00072-07 | Q. It might be something a little lower
00072-08 | than 30 million, somewhere higher than 60
00072-09 | million, but some where in between?
00072-10 | A. That's right.
00072-11 | Q. Now I had also -- the reason I gave
00072-12 | you Exhibit 3, Bates number 5588, the page
00072-13 | entitled Camel 1992 marketing plan, and it has
00072-14 | various components of advertising and promotion

00072-15 | in the left-hand column, does it not? It has
00072-16 | media, promotion, continuity, direct marketing,
00072-17 | field marketing.
00072-18 | A. Yes.
00072-19 | Q. Those are all various general
00072-20 | categories of marketing that RJR did with Camel?
00072-21 | A. Yes.
00072-22 | Q. And this breaks down expenditures by
00072-23 | quarter, and if you look at the total media,
00072-24 | M-E-D-I-A, expenditures, it was 41.6 million. Do
00072-25 | you see that?

----- PAGE00073 -----

00073-01 | A. Yes. I see that.
00073-02 | Q. That certainly comports with the
00073-03 | range you've just given us, right?
00073-04 | A. Yes. Although this is Camel's
00073-05 | marketing plan.
00073-06 | Q. It is not actual expenditures?
00073-07 | A. Yeah. One, it might not be actual
00073-08 | expenditures and two, this is the total media
00073-09 | placement. Just because you spent it in media,
00073-10 | doesn't mean it was spent on the Joe Camel
00073-11 | campaign because you could have easily done other
00073-12 | things as well, so....
00073-13 | Q. Okay. So this number includes the
00073-14 | Joe Camel campaign, plus other Camel campaigns,
00073-15 | other than Joe Camel?
00073-16 | A. It could, yes. I mean, I don't know
00073-17 | specifically what was included here, but it
00073-18 | could.
00073-19 | Q. Now the total expenditure in this
00073-20 | marketing plan is for \$204.5 million. Do you see
00073-21 | that?
00073-22 | A. Yes, I do.
00073-23 | Q. Can you give me a range of the total
00073-24 | spending which includes media placement and the
00073-25 | other portions of marketing for the Joe Camel

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00074-01 | campaign between 1987 and 1997? Because
00074-02 | obviously it is more than the 30 to 60 million.
00074-03 | A. Well, this wasn't -- you know, I'm
00074-04 | not sure what you are asking me.
00074-05 | Q. You gave us a range for the media
00074-06 | placement for Joe Camel.
00074-07 | A. Yes.
00074-08 | Q. From 1987 to 1997 as between 30 and
00074-09 | \$60 million.
00074-10 | A. Yes.
00074-11 | Q. Perhaps some years a little less,
00074-12 | perhaps some years a little more. Right?
00074-13 | A. Yes.
00074-14 | Q. Now I'm talking about the total
00074-15 | expenditures for marketing of Joe Camel, which
00074-16 | includes things other than media placement, does
00074-17 | it not?
00074-18 | A. See, you have to be careful here,
00074-19 | because you are -- one is the marketing of the
00074-20 | Camel brand.
00074-21 | Q. Right.
00074-22 | A. And then you are talking about a Joe
00074-23 | Camel advertising campaign.
00074-24 | Q. Right.
00074-25 | A. So what this -- and I don't know if

00075-01 | it was the final expenditures or not, but what
00075-02 | this summarizes is the marketing of the Camel
00075-03 | brand, not what was spent on the Joe Camel
00075-04 | advertising.

00075-05 | Q. Okay. Then -- I'm glad you are
00075-06 | asking because that's kind of what my next
00075-07 | question was. I understand that this document
00075-08 | represents Joe Camel plus other campaigns which
00075-09 | involved marketing Camel.

00075-10 | A. Not just other campaigns. Let me
00075-11 | explain. Like for example, if you take this line
00075-12 | coupon, seven and a half million here, this is
00075-13 | probably just coupons placed on packs. I mean,
00075-14 | we would have to go back and look.

00075-15 | Q. It is not an actual expenditure, is
00075-16 | that what you are saying?

00075-17 | A. No. Well, it is an expenditure in
00075-18 | the sense you are giving discounts to consumers,
00075-19 | but it has nothing to do with the Joe Camel
00075-20 | campaign. Do you see the difference?

00075-21 | Q. Yes, I do.

00075-22 | A. One thing is marketing a brand and
00075-23 | then there is supporting a campaign and they are
00075-24 | two different things.

00075-25 | Q. I appreciate that and thank you.

00076-01 | That does make sense to me.

00076-02 | Were there coupon programs, premium
00076-03 | programs, gratis, I'm assuming sampling, involved
00076-04 | with Joe Camel specifically or is that not
00076-05 | possible to do? In other words, was there a
00076-06 | coupon with Joe Camel's picture on it? It was a
00076-07 | specific Joe Camel type coupon?

00076-08 | MR. KACZYNSKI: Object to the form.

00076-09 | THE WITNESS: First of all, on the gratis
00076-10 | thing, that is not sampling. That is where in
00076-11 | the store we do a promotion, like you have a buy
00076-12 | one, get one free and that product is technically
00076-13 | free, you know, because the consumer buys one
00076-14 | pack and gets the other free, and that's the cost
00076-15 | of the gratis to do that kind of retail
00076-16 | promotion.

00076-17 | BY MR. KRISTAL:

00076-18 | Q. So what you do, what RJR does is,
00076-19 | when you have a two-for-one sale, the consumer
00076-20 | doesn't pay for it, you don't want the retailer
00076-21 | to pay for it, so you reimburse the retailer for
00076-22 | the cost of that; is that correct?

00076-23 | A. That's correct.

00076-24 | Q. Is there anyway --

00076-25 | A. Well, excuse me. I mean, I wouldn't

00077-01 | say that we reimburse them. I think how
00077-02 | technically it works is, that we don't charge
00077-03 | them for the gratis part of the product, so we're
00077-04 | essentially giving them that free so they can
00077-05 | pass on that savings to the consumer.

00077-06 | Q. And that's one less pack that you
00077-07 | could have sold?

00077-08 | A. That's correct.

00077-09 | Q. Is that how you calculate the number
00077-10 | of gratis?

00077-11| A. Well, the gratis number is the cost
00077-12| to us of doing that.
00077-13| Q. Not the sales price?
00077-14| A. Right.
00077-15| Q. Is there anyway to figure out the
00077-16| total marketing expenditures, not just media
00077-17| placement, for just the Joe Camel campaign or is
00077-18| that not possible?
00077-19| A. Well, I would say the majority would
00077-20| not be around the Joe Camel campaign, because
00077-21| advertising is really where you deliver the
00077-22| campaign, but there would be some instances where
00077-23| it would be integrated other places as well, so
00077-24| yeah, you can estimate.
00077-25| Q. But it would be more than just the

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00078-01| media placement?
00078-02| A. It would be somewhat more. If you
00078-03| are saying did you use any image at all on
00078-04| anything else, yes.
00078-05| Q. In other words, if there was a Joe
00078-06| Camel promotion that would be attributed to the
00078-07| Joe Camel campaign, but we just don't know how to
00078-08| break that out?
00078-09| A. Well, it's not the campaign anymore.
00078-10| It is taking some piece of the campaign and
00078-11| putting it on a promotion, so the campaign is the
00078-12| media placement. But then there are lots of
00078-13| things that don't even carry a picture from the
00078-14| campaign at all, so...
00078-15| Q. Of the total marketing of Camel, and
00078-16| let's just stick with this year that's on Exhibit
00078-17| 3, 1992. Were there other campaigns other than
00078-18| Joe Camel?
00078-19| A. In 1992, I can't answer it. But over
00078-20| time, we have done other things. Like we'll run
00078-21| nostalgic ads or just trademark ads. Well, what
00078-22| I mean by trademark ads, if you look at the Camel
00078-23| pack, there is pyramids on it and the camel and
00078-24| palm trees, so we might do an ad that comes
00078-25| straight from that trademark and, you know, we do

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00079-01| a lot of trade -- what we call trademark things
00079-02| over time.
00079-03| Q. Between 1987 to 1997, was the
00079-04| predominant ad campaign for Camel, Joe Camel?
00079-05| A. Yes.
00079-06| Q. Are you familiar with something
00079-07| called the recall concept in marketing?
00079-08| A. In advertising.
00079-09| Q. In advertising. Okay. And that is
00079-10| one of the goals of advertising?
00079-11| A. Yes.
00079-12| Q. And if I read your Mangini deposition
00079-13| last night correctly, recall is the measure of
00079-14| whether a product was both noticed and
00079-15| remembered?
00079-16| MR. KACZYNSKI: Object to the form.
00079-17| THE WITNESS: Whether an ad. Whether an ad
00079-18| that we ran was noticed, remembered.
00079-19| BY MR. KRISTAL:
00079-20| Q. So recall is a measurement of whether
00079-21| an ad was noticed and remembered?

00079-22| A. Yes.
00079-23| Q. Is that kind of one of the building
00079-24| blocks of an ad campaign? Because obviously if
00079-25| nobody is noticing and remembering your ads, you
----- PAGE00080 -----

00080-01| can't have a successful campaign.
00080-02| MR. KACZYNSKI: Object to the form.
00080-03| THE WITNESS: In, you know, in advertising,
00080-04| you -- it's like a measurement. When you are
00080-05| constructing the campaign, the objective is for
00080-06| the campaign to communicate information about the
00080-07| brand that will motivate people to switch to the
00080-08| brand or motivate the people who are with the
00080-09| brand to stay with it, and that's adult smokers.
00080-10| But then when you are measuring how effective you
00080-11| have been at delivering it to adult consumers,
00080-12| you go back and say, measure, did you notice it,
00080-13| can you recall it, what did you take away from
00080-14| it.
00080-15| BY MR. KRISTAL:
00080-16| Q. The Mizerski article, Exhibit 2, was
00080-17| with very young children, a recall experiment or
00080-18| study.
00080-19| A. It was a recognition study.
00080-20| Q. Okay.
00080-21| A. It is not a recall study that I'm
00080-22| talking about where you recall an ad. It was a
00080-23| recognition study of when you take this trade
00080-24| character by itself, do they recognize it.
00080-25| Q. Now could you get Exhibit 2. Do you
----- PAGE00081 -----

00081-01| have it in front of you?
00081-02| MR. KACZYNSKI: We got it.
00081-03| THE WITNESS: Yes.
00081-04| BY MR. KRISTAL:
00081-05| Q. What Mizerski was looking at was
00081-06| Cartoon Trade Character Recognition and Attitudes
00081-07| Toward The Product Category In Young Children.
00081-08| That's the title of the article. Would you agree
00081-09| that's generally what the whole thing is about?
00081-10| A. Yes. That's the title of the
00081-11| article.
00081-12| Q. Well, isn't that generally what the
00081-13| article is about, that subject?
00081-14| A. Yes.
00081-15| Q. And one of the cartoon trade
00081-16| characters that was used specifically in this
00081-17| study, was the Joe Camel character?
00081-18| A. Yes.
00081-19| Q. And in fact, if you turn to Page 63,
00081-20| there is a picture of Joe Camel, it looks like in
00081-21| a tuxedo, with his arms folded. Lower right.
00081-22| A. Yes. I see it.
00081-23| Q. Now, if you look at the first page of
00081-24| the article --
00081-25| A. You know. Excuse me, but are you
----- PAGE00082 -----

00082-01| going to ask me questions about this article?
00082-02| Q. Yes.
00082-03| A. Because I haven't read it in a number
00082-04| of years, and I'm going to have to take some time
00082-05| to reread it if you are going to ask me questions
00082-06| on it.

00082-07| Q. Okay. This, I understand, is one of
00082-08| the articles that you are relying on for your
00082-09| testimony. Is that correct or incorrect?
00082-10| A. That's correct. I just need to
00082-11| refresh my recollection. Obviously I've read it
00082-12| and I'm aware of the conclusions in it, but I
00082-13| haven't read it in some time.
00082-14| Q. Okay. I appreciate your concern.
00082-15| Let me just start asking questions, because I
00082-16| think they are very focused on certain particular
00082-17| things, and if you need to read the whole
00082-18| article, we can do that. Let me just start and
00082-19| you can tell me if you need to do that. Is that
00082-20| all right?
00082-21| A. That's all right.
00082-22| Q. It may be the way I'm going to ask
00082-23| the questions, we don't need to do it. But if
00082-24| you do need to do that, we can do it.
00082-25| A. Okay.

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00083-01| Q. All right. The first sentence
00083-02| reads -- and part of the reason I'm saying that,
00083-03| it is going to be a lot of reading communally
00083-04| here.
00083-05| First sentence reads: "The effect of
00083-06| advertising for adults only products on children
00083-07| has had limited experiment based study." Do you
00083-08| agree with that?
00083-09| A. I haven't specifically looked into
00083-10| that question to be able to provide an opinion on
00083-11| it.
00083-12| Q. All right. And there is a citation
00083-13| to two studies. One is a 1985 study to Gorn and
00083-14| Florshiem, and the other is a 1979 study of
00083-15| Robertson is the lead author for that proposition
00083-16| that I just read, that first sentence that
00083-17| Mizerski wrote. Have you read either one of
00083-18| those studies that he cites for that proposition?
00083-19| A. I don't believe so. I don't recall.
00083-20| Q. The next sentence reads: "Most work
00083-21| reports on survey responses or anecdotal
00083-22| accounts" -- strike that, because I put the wrong
00083-23| emphasis on the wrong place. Let me start it
00083-24| again.
00083-25| MR. KACZYNSKI: Purports being.

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00084-01| MR. KRISTAL: Exactly.
00084-02| BY MR. KRISTAL:
00084-03| Q. Let me read it again. "Most work
00084-04| reports on survey responses or anecdotal accounts
00084-05| of how children would respond." Do you agree
00084-06| with that?
00084-07| A. Again, I haven't looked into this
00084-08| myself. I don't have a reason to believe he's
00084-09| misrepresenting it, but I --
00084-10| Q. And that's fine. And that's --
00084-11| obviously whatever answer you give is perfectly
00084-12| acceptable, but you can agree, disagree, have no
00084-13| opinion or anything else is okay.
00084-14| The next sentence reads:
00084-15| "Nonetheless, many would agree with McNeal, who
00084-16| claims advertisers have the ability to convince
00084-17| children to like and desire practically any

00084-18| product." Do you agree or disagree with that?
00084-19| MR. KACZYNSKI: Objection, vague. Agree
00084-20| that many would agree with McNeal or agree with
00084-21| the quoted passage?
00084-22| BY MR. KRISTAL:
00084-23| Q. Okay. Why don't we do it both ways.
00084-24| Would you agree or disagree that many
00084-25| would agree with McNeal on that subject?

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00085-01| A. I don't know how many agree with
00085-02| McNeal on that subject.
00085-03| Q. Okay. Do you agree with what McNeal
00085-04| is apparently saying, that advertisers have the
00085-05| ability to convince children to like and desire
00085-06| practically any product?
00085-07| A. I don't think that sounds right, no.
00085-08| Q. And what are you basing that on?
00085-09| A. It just doesn't make sense to me,
00085-10| being in consumer marketing, that you can make
00085-11| people like and desire nearly any product, and I
00085-12| work with adults, but I don't believe that's
00085-13| true.
00085-14| Q. Okay.
00085-15| A. So I think it is unlikely it is true
00085-16| with children either. It is common sense.
00085-17| Q. Have you ever done any advertising
00085-18| for children?
00085-19| A. No. We market our products to
00085-20| adults.
00085-21| Q. Okay. But I'm saying, have -- either
00085-22| with RJR or at any point in time in your life,
00085-23| have you ever done any advertising designed for
00085-24| children?
00085-25| A. No. I have -- we -- no.

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00086-01| BY MR. KRISTAL:
00086-02| Q. Other than that statement doesn't
00086-03| make common sense to you, do you have any other
00086-04| support in terms of study, literature reviews,
00086-05| textbooks, anything like that?
00086-06| A. Yes. I would say one, 16 and half
00086-07| years of marketing products to adults. And I
00086-08| don't believe that is true among adults. Also,
00086-09| all of the literature about why children start
00086-10| smoking that I have read and the impact of
00086-11| advertising, it does not suggest that advertising
00086-12| has the ability to convince children to like and
00086-13| desire practically any product. In fact, what
00086-14| this study shows is, that when they look at
00086-15| advertising, even though they recognize it, that
00086-16| they don't think smoking is acceptable. And in
00086-17| fact, recognition of trade character, it's like
00086-18| the product goes up with the recognition of the
00086-19| trade character, so I think that's incorrect.
00086-20| Q. If I understood you correctly, I'm
00086-21| sure you'll tell me if I didn't, the two
00086-22| components of your answer were: One, your
00086-23| experience in marketing to adults, and the other
00086-24| is the literature you've read on the effect of
00086-25| advertising on children starting to smoke. Did I

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00087-01| get the two broad categories correct?
00087-02| A. And I was talking about specifically

00087-03 | in this study, the conclusions that have been
00087-04 | made that --
00087-05 | Q. I'm going to get to the conclusions.
00087-06 | I'm just trying to understand your source of
00087-07 | disagreement with the statement, "advertisers
00087-08 | have the ability to convince children to like and
00087-09 | desire practically any product."
00087-10 | A. Right.
00087-11 | Q. The source is, your experience
00087-12 | marketing to adults and your reading on
00087-13 | advertising with respect to children's attitudes
00087-14 | towards smoking.
00087-15 | A. And specifically this study.
00087-16 | Q. And we're -- Okay.
00087-17 | A. I'm saying, but that's part of what I
00087-18 | am saying here is, specifically this study --
00087-19 | Q. Right.
00087-20 | A. -- says that, you know, as this
00087-21 | recognition of a trade character goes up, just
00087-22 | like of the product goes down, and there are
00087-23 | other studies that show regardless of
00087-24 | recognition, like with Henke, among small
00087-25 | children, regardless of recognition of the

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00088-01 | cigarette advertising, dislike of cigarettes is
00088-02 | overwhelming, like 96 percent. So I mean
00088-03 | clearly, I think that these studies show that
00088-04 | that's not true.
00088-05 | Q. Okay. Now you may need to look at
00088-06 | the rest of this article, but you might be able
00088-07 | to tell me off the top of your head. This study
00088-08 | involved three, four, five and
00088-09 | 6-year-old-year-old children, correct?
00088-10 | A. Really, if you are going to ask me
00088-11 | those kinds of specifics, I need to --
00088-12 | Q. That's fine.
00088-13 | A. I will need to refresh my
00088-14 | recollection.
00088-15 | Q. We're going to get there.
00088-16 | A. Okay.
00088-17 | Q. You don't need to do that now. I'll
00088-18 | withdrawal that question and we'll get there in
00088-19 | due time and you'll see.
00088-20 | If you look at the right-hand column,
00088-21 | the next to the last sentence: "Both
00088-22 | recognition" -- first of all, I want you to get
00088-23 | there with me. Do you see the sentence that
00088-24 | starts with both recognition at the right-hand
00088-25 | column?

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00089-01 | MR. KACZYNSKI: Up above.
00089-02 | BY MR. KRISTAL:
00089-03 | Q. I apologize. Are you there?
00089-04 | A. Yes.
00089-05 | Q. "Both recognition and attitude
00089-06 | towards a product have been viewed as predictors
00089-07 | of future product use." Do you agree with that?
00089-08 | A. Really, I'm going to have to read the
00089-09 | context of all this. It is like taking one
00089-10 | sentence out of a paragraph, and I really need to
00089-11 | read the context that it falls into, so if you
00089-12 | want me to do that, I will.
00089-13 | Q. Okay. Are you saying you want to

00089-14 | read that whole paragraph or that whole section
00089-15 | or the whole article to answer that question?
00089-16 | A. Well, I'm not sure until I start
00089-17 | reading it here, but I would like to start at the
00089-18 | beginning and get to that point and see if --
00089-19 | Q. Sure. That's fine. Let me ask you
00089-20 | this, Miss Beasley: Are you stopping after that
00089-21 | or do you need to read the whole article at this
00089-22 | juncture, because if you are, we can just stop
00089-23 | the videotape and take a break while you do that.
00089-24 | It is entirely up to you. I really don't want to
00089-25 | be unfair in any way.

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00090-01 | A. I need to read the context here, I
00090-02 | do. To be able to answer your questions, I need
00090-03 | to refresh my recollection.
00090-04 | Q. I understand that. By that are you
00090-05 | saying you need to read the article now?
00090-06 | A. I need to refresh my recollection on
00090-07 | it, yes.
00090-08 | Q. That's fine. Why don't we go off the
00090-09 | video.
00090-10 | VIDEOTAPE OPERATOR: We're going off the
00090-11 | record at 11:12 a.m.
00090-12 | (Recess taken.)
00090-13 | VIDEOTAPE OPERATOR: We're back on the
00090-14 | record at 11:36 a.m.
00090-15 | BY MR. KRISTAL:
00090-16 | Q. While we were off the record, you had
00090-17 | a chance to read, if not every word, read the
00090-18 | vast majority of this article, the Mizerski
00090-19 | article?
00090-20 | A. Yes. I read most of it. Skimmed
00090-21 | some of it.
00090-22 | Q. Have you ever read every word of the
00090-23 | article?
00090-24 | A. Yes.
00090-25 | Q. When was the last time you actually

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00091-01 | read the article?
00091-02 | A. Probably -- I'm just estimating, a
00091-03 | couple of years ago.
00091-04 | Q. Two or three or five or six?
00091-05 | A. Two or three I'm saying, probably.
00091-06 | Q. Where did you get this article?
00091-07 | A. I just got this from you.
00091-08 | Q. Okay. Fair enough. Your short-term
00091-09 | memory is still good.
00091-10 | A. Are you trying to throw me here?
00091-11 | Q. When you first saw the article is
00091-12 | what I meant. From whom did you get it?
00091-13 | A. Oh. I believe it was from our
00091-14 | external relations department.
00091-15 | Q. From a lawyer?
00091-16 | A. No. Our external relations
00091-17 | department is people who work with the media and
00091-18 | who work in the external area and gather things
00091-19 | that are being published. They also work with
00091-20 | the lawyers. I mean, it is a separate
00091-21 | department. It is not the law department.
00091-22 | Q. Did you see this article in this form
00091-23 | that it's in, Exhibit 2, or did you see any other
00091-24 | form, i.e., drafts of the article, unpublished

|00092-01| A. I did not review drafts of the
|00092-02| article.
|00092-03| Q. Did you -- was the article in this
|00092-04| exact form as Exhibit 2? In other words, a copy
|00092-05| of the article from this journal when you first
|00092-06| saw it?
|00092-07| A. I may have saw a version before it
|00092-08| was published. I don't really recall. I mean,
|00092-09| this is published in the Journal of Marketing.
|00092-10| It is possible but, you know, this is the one I
|00092-11| remember.
|00092-12| Q. R. J. Reynolds Tobacco Company funded
|00092-13| this study, correct?
|00092-14| A. That's correct.
|00092-15| Q. Was it the external affairs
|00092-16| department or group that funded it?
|00092-17| A. I believe so. I mean, it wasn't
|00092-18| marketing. It wasn't --
|00092-19| Q. Right.
|00092-20| A. It wasn't me. I mean, it could have
|00092-21| been legal.
|00092-22| Q. And did you know before the study
|00092-23| came out, that RJR was funding Mizerski to
|00092-24| conduct this study?
|00092-25| A. Yes. I knew that RJR was funding a

|00093-01| study with Mizerski.
|00093-02| Q. Did you know that RJR was funding a
|00093-03| study before or after the decision was made to
|00093-04| actually fund it? In other words, did you hear
|00093-05| or attend meetings or discuss with anyone whether
|00093-06| or not this study should be funded prior to the
|00093-07| decision?
|00093-08| MR. KACZYNSKI: Object to the form.
|00093-09| THE WITNESS: No. I mean --
|00093-10| MR. KRISTAL:
|00093-11| Q. Do you know what I am asking?
|00093-12| Because it was a very long question.
|00093-13| A. Okay. Let's start again.
|00093-14| Q. I'm just trying to find out, if you
|00093-15| found out that RJR was funding this study before
|00093-16| the decision had been made to do that or whether
|00093-17| you were part of the decision-making process or
|00093-18| at least informed that it was under
|00093-19| consideration.
|00093-20| A. I don't remember the exact turn of
|00093-21| events. What I can say is, I was not a
|00093-22| decision-maker in whether to fund it or not. I
|00093-23| did not review the drafts. Now, was I told about
|00093-24| it before they actually made the decision?
|00093-25| Certainly possible. I mean, I --

|00094-01| Q. Okay. Who, to your knowledge,
|00094-02| reviewed the drafts at RJR? And list the people
|00094-03| to me.
|00094-04| MR. KACZYNSKI: Object to foundation.
|00094-05| THE WITNESS: I'm not really sure.
|00094-06| BY MR. KRISTAL:
|00094-07| Q. Do you know who Ernie Facklman is?
|00094-08| A. Yes.
|00094-09| Q. Mr. Facklman is a RJR employee?

00094-10 A. No, he isn't.
00094-11 Q. Was when this study was being funded?
00094-12 A. Yes.
00094-13 Q. And it's F-A-C-K-L-M-A-N.
00094-14 A. Yes.
00094-15 Q. What department was Mr. Facklman in,
00094-16 at the time Mizerski study was being funded by
00094-17 RJR?
00094-18 A. Marketing research.
00094-19 Q. You are aware that he was receiving
00094-20 drafts of the article?
00094-21 A. You know, after the fact I became
00094-22 aware he was. While it was going on, I don't
00094-23 know if I did or not. I don't think so.
00094-24 Q. If I understand what you are saying,
00094-25 you subsequently learned that he had been

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00095-01 receiving drafts. You are not sure if you
00095-02 actually knew at the time he was receiving them.
00095-03 A. Yes. Exactly.
00095-04 Q. Do you know other than him, who was
00095-05 in the loop at RJR of the distribution of the
00095-06 drafts? Anybody?
00095-07 MR. KACZYNSKI: Objection, vague.
00095-08 THE WITNESS: I don't know.
00095-09 BY MR. KRISTAL:
00095-10 Q. Is Mr. Facklman an attorney?
00095-11 A. No.
00095-12 Q. Did you ever have any discussions
00095-13 with him or anybody else regarding the drafts
00095-14 either before or after the final article was
00095-15 completed?
00095-16 A. No.
00095-17 Q. Have you ever seen any of the drafts?
00095-18 A. That's possible, but I'm not sure. I
00095-19 just remember during the FTC investigation maybe
00095-20 I saw a draft, or maybe in litigation somebody
00095-21 brought one out from the files. I wasn't
00095-22 involved in the whole thing when it happened, but
00095-23 post, that's possible.
00095-24 Q. Has RJR, to your knowledge, funded
00095-25 any other studies, other than the Mizerski study,

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00096-01 regarding the effects of -- let me read this,
00096-02 Cartoon Trade Character Recognition and Attitude
00096-03 Towards Product Category In Young Children? I'm
00096-04 reading from the title, but in that area.
00096-05 A. In the general area. We also funded
00096-06 the Roper study.
00096-07 Q. In 1993?
00096-08 A. Yes. It was right around there.
00096-09 Early 90's.
00096-10 Q. Were you involved in the decision to
00096-11 fund the Roper, R-O-P-E-R, study?
00096-12 A. No.
00096-13 Q. The Roper study is one of the other
00096-14 things you are relying on for your testimony?
00096-15 A. Yes.
00096-16 Q. When was the last time you read the
00096-17 Roper study?
00096-18 A. It has probably been a couple years.
00096-19 Q. Other than Mizerski and Roper, are
00096-20 there any other studies on this general subject

00096-21 | that were funded by RJR?
00096-22 | A. Well, it depends upon what you are
00096-23 | defining as the general subject. The Joe Camel
00096-24 | campaign, is that the general --
00096-25 | Q. No. I'm talking about on the subject
----- PAGE00097 -----
00097-01 | of Cartoon Trade Character Recognition and
00097-02 | Attitudes Towards Purchasing Products In
00097-03 | Children.
00097-04 | A. Oh. Well, I don't know. You might
00097-05 | not call it in that same category.
00097-06 | Q. Well, tell me what you are thinking
00097-07 | of.
00097-08 | A. We funded work that was done by
00097-09 | Howard Biels, econometric analysis. It is not
00097-10 | really this -- I don't know how specific you are
00097-11 | being on this subject, but...
00097-12 | Q. And that econometric analysis was
00097-13 | regarding market share with different age groups,
00097-14 | generally?
00097-15 | A. It was generally a study of what
00097-16 | factors explained observed smoking behavior and
00097-17 | accounting for all of the different factors that
00097-18 | might explain observed smoking behavior based on
00097-19 | applying statistical methods to the government
00097-20 | data.
00097-21 | Q. Are you relying on that study at all?
00097-22 | A. Yes.
00097-23 | Q. Are there any other studies? And I
00097-24 | would include that in the category that I'm
00097-25 | asking about.
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00098-01 | A. You would.
00098-02 | Q. So are there any other studies in
00098-03 | that category?
00098-04 | A. Well, again, I'm not sure if this is
00098-05 | in your category or not.
00098-06 | Q. Okay.
00098-07 | A. But we, or at least outside counsel,
00098-08 | or we the company, I wasn't involved exactly on
00098-09 | how that was funded, but we conducted audits and
00098-10 | surveys research into underage shares for the
00098-11 | Federal Trade Commission investigation. "We,"
00098-12 | meaning combination of outside legal, the
00098-13 | company. Not me.
00098-14 | Q. Was there a document that was
00098-15 | generated as a result of that research?
00098-16 | A. Well, certainly when we presented our
00098-17 | case to the Federal Trade Commission, we spoke to
00098-18 | them about results from the audits and survey
00098-19 | research.
00098-20 | Q. Was there a particular individual who
00098-21 | was kind of designated as an expert to explain
00098-22 | the survey, the research, the results?
00098-23 | A. You know, there were several people
00098-24 | involved. There was outside counsel, and I just
00098-25 | can't remember exactly who spoke to the whole
----- PAGE00099 -----
00099-01 | depth. I think it was a number of people.
00099-02 | Q. I don't recall seeing that on your
00099-03 | reliance list. Do you know if it is or it isn't?
00099-04 | A. What?
00099-05 | Q. The audits and surveys research.

00099-06| Well, let me ask you this: Are you relying on
00099-07| that?
00099-08| A. Well, it depends on what issue comes
00099-09| up. If you ask me about underage share, then I
00099-10| would rely on it to respond to you.
00099-11| Q. Okay.
00099-12| A. So, I mean, I don't believe either we
00099-13| put on the government data on underage share, but
00099-14| then again, if you ask me about it, I'm going to
00099-15| refer to government data on that, so....
00099-16| Q. So in the general category of
00099-17| underage market share, if you are allowed to
00099-18| testify as an expert to offer an opinion, you
00099-19| would be relying on that research in part?
00099-20| A. Government -- I'm sorry.
00099-21| Q. Go ahead. I'm just talking about
00099-22| that specific study that was funded by RJR in the
00099-23| audit and surveys.
00099-24| A. And your question is?
00099-25| Q. Whether you -- if you are allowed to

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00100-01| give an opinion on underage smokers share of the
00100-02| market, you would be relying on that in part for
00100-03| your opinion?
00100-04| MR. KACZYNSKI: Object to the form.
00100-05| THE WITNESS: Yes. What I was thinking of
00100-06| when you said it, I'm not sure what the question
00100-07| you are asking is. If I was asked -- if you
00100-08| asked me what is my opinion of Camel's underage
00100-09| share.
00100-10| BY MR. KRISTAL:
00100-11| Q. Right.
00100-12| A. Then I would rely on -- to answer
00100-13| that question, I would rely on government data
00100-14| and also the audits and surveys research.
00100-15| Q. Okay. Are there any other studies
00100-16| other than the four that you've just mentioned;
00100-17| Mizerski, Roper, Biels and the audit surveys?
00100-18| A. Any other studies that --
00100-19| Q. Funded by RJR in the category we're
00100-20| talking about.
00100-21| A. I can't think of anything else right
00100-22| now.
00100-23| Q. The four that you've mentioned, were
00100-24| all litigation driven, i.e., they were done
00100-25| because of pending litigation?

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00101-01| A. I wouldn't -- I would say it was a
00101-02| combination of things. If you are saying a
00101-03| Federal Trade Commission investigation -- are you
00101-04| calling that litigation?
00101-05| Q. Yes.
00101-06| A. Okay.
00101-07| Q. If using that as litigation --
00101-08| A. Because technically I don't think it
00101-09| was litigation. It was like an investigation.
00101-10| Q. Okay.
00101-11| A. But it would have been litigation,
00101-12| the Federal Trade Commission investigation and
00101-13| the JAMA articles. When the Pierce and Defriends
00101-14| and Fischer articles came out in December of 1991
00101-15| in the American AMA, we were very concerned about
00101-16| the conclusions drawn in those articles. That

00101-17| provided motivation for us to say -- to look at
00101-18| are they valid conclusions, to fund the research
00101-19| for Mizerski and Roper and to also look at other
00101-20| research that had been done.
00101-21| Q. How do you know that, what you just
00101-22| said?
00101-23| A. Well, again --
00101-24| Q. I'm not asking you how do you know
00101-25| when the JAMA articles came out -- J-A-M-A -- I'm

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00102-01| asking how do you know that that had any
00102-02| influence on the decision to fund Mizerski or
00102-03| Roper.
00102-04| A. Well, because I was there at the
00102-05| time.
00102-06| Q. Maybe I misunderstood a question. I
00102-07| thought you had no knowledge involving the
00102-08| decision-making process.
00102-09| A. I wasn't involved in making the
00102-10| decision, but I knew that the company was very
00102-11| concerned about the conclusions drawn in those
00102-12| articles and that we intended to fund -- to look
00102-13| at research, to ask people to look at the
00102-14| articles and to potentially fund research to test
00102-15| the hypotheses in those articles, but I was not
00102-16| part of, are we going to fund the specific study,
00102-17| looking at drafts. I mean, I was not part of any
00102-18| of that.
00102-19| Q. What is the source of your knowledge
00102-20| on that issue? Did you attend meetings where
00102-21| that was discussed? Even though you weren't in
00102-22| the actual decision-making loop, were memos
00102-23| circulated to that effect, even though you
00102-24| weren't making a decision?
00102-25| MR. KACZYNSKI: Object to the form. Go

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00103-01| ahead.
00103-02| THE WITNESS: I was -- I don't recall being
00103-03| in any meetings on it. I don't recall receiving
00103-04| any memos on it. I think if -- I think probably
00103-05| it was a general knowledge that someone told me
00103-06| verbally, and I can't say exactly who. It could
00103-07| have been the head of marketing then. It could
00103-08| have been marketing research. It could have been
00103-09| legal. It could have been external relations,
00103-10| the people who were actually involved in doing
00103-11| it.
00103-12| MR. KRISTAL:
00103-13| Q. The sequence chronologically was,
00103-14| first the article in the Journal of American
00103-15| Medical Association and then the FTC
00103-16| investigation began?
00103-17| A. No. The sequence of events is, in
00103-18| 1990, the -- this is my best understanding,
00103-19| anyway.
00103-20| Q. Okay.
00103-21| A. In 1990, the Federal Trade Commission
00103-22| began a general investigation of all tobacco
00103-23| companies' youth practices. And, it wasn't until
00103-24| either around or just after the JAMA articles
00103-25| came out, I can't be sure of it, that they began

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00104-01| to focus on the Joe Camel campaign. I think it

00104-02| was post JAMA articles.
00104-03| Q. Did RJR intend to fund any studies or
00104-04| discuss funding any studies, prior to the
00104-05| articles coming out in the Journal of the
00104-06| American Medical Association, regarding youth
00104-07| smoking and advertising?
00104-08| MR. KACZYNSKI: Object to foundation.
00104-09| THE WITNESS: I don't know.
00104-10| BY MR. KRISTAL:
00104-11| Q. In terms of the effect of its
00104-12| advertising the Joe Camel campaign, on whether or
00104-13| not children began smoking or children's
00104-14| attitudes towards smoking, RJR had no intent to
00104-15| do any study, fund any study on that subject
00104-16| until after the articles came out in the Journal
00104-17| of the American Medical Association?
00104-18| MR. KACZYNSKI: Objection, foundation.
00104-19| THE WITNESS: I don't know that.
00104-20| MR. KRISTAL:
00104-21| Q. Well, are you aware of any
00104-22| discussions before the articles in the Journal of
00104-23| the American Medical Association came out, about
00104-24| funding studies simply to see the effect of what
00104-25| Joe Camel was having?

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00105-01| A. I'm not aware. I don't know. I
00105-02| mean, I wouldn't necessarily have been part of
00105-03| those discussions. I don't know.
00105-04| Q. Likely, would you have been or at
00105-05| least heard about it if it occurred?
00105-06| MR. KACZYNSKI: Object to the form.
00105-07| THE WITNESS: You know, I don't think so
00105-08| necessarily. If people were having discussions
00105-09| and nothing had been decided, it wouldn't
00105-10| necessarily be true that I would have been told.
00105-11| I don't know.
00105-12| MR. KRISTAL:
00105-13| Q. But if there were discussions --
00105-14| well, you were supervising Camel in starting in
00105-15| what -- since you were vice president -- that was
00105-16| one of your responsibilities?
00105-17| A. No. If you want to look back --
00105-18| Q. I'm not talking about the earlier
00105-19| time in '84. Did you have any responsibility for
00105-20| Camel when you were vice president between August
00105-21| of '89 and August of '93?
00105-22| A. August -- well, July of '93 is when I
00105-23| picked Camel back up again. Is that what you are
00105-24| looking at?
00105-25| Q. Okay. I'm looking for the period

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00106-01| before that.
00106-02| A. I was senior manager of Camel from --
00106-03| in --
00106-04| Q. I'm not asking that.
00106-05| A. Oh. Okay.
00106-06| Q. The period August '89 to August of
00106-07| '93, where you were listed as the vice president
00106-08| before you were senior vice president, looking on
00106-09| the first page.
00106-10| A. Oh. I'm on this page. Sorry.
00106-11| Q. Okay. That's fine.
00106-12| A. No wonder we were having problems.

00106-13| Q. Right. I see. Camel didn't pickup
00106-14| until July 1993 most recently.
00106-15| A. Right. Although, you know, when I
00106-16| was a vice president of Winston, that was just
00106-17| Winston, but when I was vice president of
00106-18| strategic marketing planning, I wasn't really
00106-19| involved in all the specifics of the Camel brand,
00106-20| but in general, more general marketing issues.
00106-21| Q. Okay. Let's get back to the Mizerski
00106-22| article. The sentence I had read before we --
00106-23| before you needed to read the article or read
00106-24| most of the article, was: "Both recognition and
00106-25| attitude towards a product have been viewed as

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00107-01| predictors of future product use." Do you see
00107-02| that sentence?
00107-03| A. Yes, I do.
00107-04| Q. Do you agree or disagree with that?
00107-05| A. Well, I think that some people have
00107-06| viewed it that way, which is what it says.
00107-07| Fischer, yes, he did view it that way.
00107-08| Q. So you are agreeing that some people
00107-09| have viewed it that way?
00107-10| A. Yes. And that's what that statement
00107-11| says.
00107-12| Q. Have you read the Fischer article
00107-13| that's cited here?
00107-14| A. I believe -- well, we would have to
00107-15| look, but I think that's Fischer from JAMA, and
00107-16| in that case, I have.
00107-17| Q. Yes, it is. Have you read the McNeal
00107-18| article? Well, that would be the same McNeal
00107-19| article from earlier which you said you haven't
00107-20| ready. Is that correct?
00107-21| A. I don't remember which one that was.
00107-22| Let me go back.
00107-23| Q. Sure. McNeal, 1987.
00107-24| A. Right. I have not -- I don't recall
00107-25| that, no.

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00108-01| Q. Other than agreeing that other people
00108-02| have viewed recognition and attitude as
00108-03| predictors of future market product use, do you
00108-04| agree with that or disagree with that or have no
00108-05| opinion or anything else you wish to answer?
00108-06| MR. KACZYNSKI: Object to the form, vague.
00108-07| THE WITNESS: You know, I have opinions
00108-08| relative to cigarettes, and my opinion relative
00108-09| to cigarettes is this: Recognition does not
00108-10| translate to positive attitude towards the
00108-11| product. This study shows that, Henke shows it.
00108-12| That, in fact, as recognition of the Joe Camel
00108-13| character increased in this study, so did
00108-14| disliking of cigarettes and that was also a
00108-15| function of increasing with age, too. And as
00108-16| Henke found, regardless of recognition, it was
00108-17| like 96 percent found cigarettes unacceptable, so
00108-18| I would say as it relates to cigarettes, I do not
00108-19| agree that recognition predicts attitude towards
00108-20| a product or predicts future product use.
00108-21| BY MR. KRISTAL:
00108-22| Q. What about attitude towards a
00108-23| product?

00108-24| MR. KACZYNSKI: Objection, vague.
00108-25| BY MR. KRISTAL:

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00109-01| Q. There are two components to that
00109-02| question, right?
00109-03| A. Okay.
00109-04| Q. It says recognition, which you just
00109-05| said you disagree with.
00109-06| A. Um-hum.
00109-07| Q. Now I'm asking, do you agree that
00109-08| attitude towards a product is a predictor of
00109-09| future product use?
00109-10| A. I'm not really sure. I suspect it
00109-11| could be. It may not be, but in some instances,
00109-12| too, I suspect that it could be. That if you had
00109-13| a positive attitude towards a product category,
00109-14| it still may not be one you want to use and,
00109-15| therefore, wouldn't predict future use. But in
00109-16| general, a more positive attitude towards a
00109-17| product category, not an ad, but a product
00109-18| category may in fact.
00109-19| Q. In this article -- I'm kind of
00109-20| jumping towards the end, and we'll get there, but
00109-21| I just want to follow-up on something you said an
00109-22| answer or two ago.
00109-23| Recognition of the Joe Camel
00109-24| character as being connected with cigarettes
00109-25| increased as you went from 3-years-old to

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00110-01| 4-years-old to 5-years-old to 6-years-old, right?
00110-02| That's what you found.
00110-03| A. Yes. That's correct.
00110-04| Q. Attitude toward whether or not you
00110-05| like or dislike cigarettes or the logo or the lit
00110-06| match decreased; in other words, there was more
00110-07| dislike as the older you got, so 3-year-olds said
00110-08| they liked cigarettes and matches more than four
00110-09| or five or 6-6-year-olds-olds said that, correct?
00110-10| Right? One went up, one went down, is --
00110-11| A. You are asking if he said that.
00110-12| Q. I'm asking if that's what Mizerski
00110-13| said.
00110-14| A. Yes.
00110-15| Q. Are you connecting the two in a cause
00110-16| and effect manner?
00110-17| A. Absolutely not.
00110-18| Q. Absolutely not?
00110-19| A. No.
00110-20| Q. So that this study does not show that
00110-21| the more the three, four and five and 6-year-olds
00110-22| recognize Joe Camel as being connected to
00110-23| cigarettes, meant that their attitude towards
00110-24| cigarettes and lit matches was worse?
00110-25| A. No. I don't believe this article

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00111-01| concludes this. What this article concludes is
00111-02| that the recognition of the trade character goes
00111-03| up with age. Obviously because kids are aging it
00111-04| makes common sense. And dislike of cigarettes
00111-05| goes up with age, too, so there is no positive
00111-06| association between recognition of the trade
00111-07| character and positive attitudes towards smoking.
00111-08| In fact, it appears that it is more related to

00111-09 | age. You don't like cigarettes and that's
00111-10 | overwhelming and Henke confirmed that, whether
00111-11 | you recognize the trade character or not.
00111-12 | Q. Do you take this study to say that as
00111-13 | children get older they dislike cigarettes more
00111-14 | or are you confining it to the age group here,
00111-15 | three to 6-year-old 6-year-old children?
00111-16 | A. I think this study speaks to three to
00111-17 | 6-year-old children.
00111-18 | Q. That's right. But you made a broader
00111-19 | statement, as age goes up, dislike for cigarettes
00111-20 | goes up. Are you talking about age within the
00111-21 | group three to 6-years-old?
00111-22 | A. Three to 6-years-old. And I think
00111-23 | that, you know, Mizerski in here mentions that
00111-24 | Henke found that perhaps among the three to
00111-25 | 8-year-olds that there was some higher -- I can't

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00112-01 | remember exactly.
00112-02 | Q. We'll get there.
00112-03 | A. In this article -- excuse me, it is
00112-04 | to three to 6-year-olds.
00112-05 | Q. Have you ever raised a three, four,
00112-06 | five or 6-year-old?
00112-07 | A. I have been involved with three,
00112-08 | four, five, six year olds helping raise them, but
00112-09 | not on my own.
00112-10 | Q. Well, you have children, stepchildren
00112-11 | from your marriage with your husband?
00112-12 | A. Yes, I do.
00112-13 | Q. Were they three, four, five or six at
00112-14 | the time you married?
00112-15 | A. No.
00112-16 | MR. KRISTAL: We're running out of tape, so
00112-17 | why don't we take a break and pick this up on the
00112-18 | next one.
00112-19 | VIDEOTAPE OPERATOR: We're going off the
00112-20 | record at 12:00 p.m. This is the end of tape
00112-21 | number one.
00112-22 | (Off the record.)
00112-23 | VIDEOTAPE OPERATOR: We're back on the
00112-24 | record at 12:01 p.m. This is the beginning of
00112-25 | tape number two.

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00113-01 | MR. KRISTAL:
00113-02 | Q. Were the three, four, five or
00113-03 | 6-year-olds you were referring to in terms of
00113-04 | helping raise them, nieces, nephews, cousins?
00113-05 | A. Yes. My sister, who lives in
00113-06 | [DELETE], moved to [DELETE] when her
00113-07 | son was a baby, and they lived with me, and the
00113-08 | three of us lived together for -- when he was
00113-09 | like three and four. Two, three and four. And
00113-10 | then once we -- she got her own place and I got
00113-11 | my own place, I continued to keep him one or two
00113-12 | nights a week usually, at least up until now,
00113-13 | he's 17, so I've at least been exposed to him and
00113-14 | tried to help in raising him.
00113-15 | Q. Young children three, four, five,
00113-16 | 6-year-olds are told not to play with matches?
00113-17 | A. Yes. Definitely.
00113-18 | Q. If you are a responsible an adult.
00113-19 | A. Yes. Definitely.

00113-20| Q. Three, four, five and 6-year-olds are
00113-21| told cigarette smoking is bad, if you are a
00113-22| responsible adult.
00113-23| A. Yes.
00113-24| Q. So it is not surprising, that three,
00113-25| four, five and 6-year-olds, particularly as you

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00114-01| go up in age, dislike lit matches and cigarettes.
00114-02| That's not a surprising finding, is it?
00114-03| A. No. I think that makes absolute
00114-04| sense. First of all, just that as you age your
00114-05| processing skills and your thinking skills
00114-06| improve and your awareness skills, certainly
00114-07| that's apparent. All of the antismoking
00114-08| education for children as well, you know, so both
00114-09| by parents and schools.
00114-10| Q. Under the -- in the right-hand column
00114-11| under the category advertising and children's
00114-12| responses.
00114-13| A. Oh, yes.
00114-14| Q. It reads: "McNeal's review concluded
00114-15| that advertising is capable of producing three
00114-16| types of behavior among children: Purchases,
00114-17| purchase requests and antisocial behavior (e.g.,
00114-18| requests leading to parent-child conflicts)."
00114-19| Do you -- well, not having read
00114-20| McNeal's review, do you have any reason to agree
00114-21| or disagree with McNeal's conclusion on that
00114-22| subject?
00114-23| A. I don't, because I haven't read that.
00114-24| Q. Okay. Do you have an opinion as to
00114-25| whether or not advertising is capable of

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00115-01| producing purchases, purchase requests and
00115-02| antisocial behavior as it is defined here? Do
00115-03| you have an opinion one way or another?
00115-04| A. Among children -- I mean, I'm not
00115-05| going to say broadly about advertising among
00115-06| children. I have not studied broadly all
00115-07| advertising among children.
00115-08| Q. Now, certainly with respect to three,
00115-09| four, five and 6-year-olds and cigarettes, they
00115-10| are not going to be making purchases or purchase
00115-11| requests for cigarettes, right? That's common
00115-12| sense.
00115-13| A. I think that's common sense.
00115-14| Q. The article continues: "He," and
00115-15| that's referring to Mr. McNeal, is it not?
00115-16| A. It looks like it is.
00115-17| Q. "He and others argue that the
00115-18| purchase may not be immediate because the child
00115-19| may develop and store in his or her memory, many
00115-20| of the orientations and norms reflected in
00115-21| advertising until a purchase opportunity occurs."
00115-22| Again, you have no opinion as to whether or not
00115-23| McNeal or others argue that, because you haven't
00115-24| read it, that one?
00115-25| A. Right.

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00116-01| Q. Do you agree with that, that even
00116-02| though the purchase may not be immediate,
00116-03| children may develop and store in their memory
00116-04| many of the orientations and norms reflected in

00116-05 | advertising, until a purchase opportunity occurs?
00116-06 | A. Again, I cannot speak generally to
00116-07 | all advertising and all products with kids. And
00116-08 | that's--
00116-09 | Q. Can you speak -- I'm sorry.
00116-10 | A. That's what is being referred to
00116-11 | here.
00116-12 | Q. Can you speak with respect to
00116-13 | cigarettes on that subject?
00116-14 | A. Well, I think that if you look at 10
00116-15 | to 17-year-olds in the Roper study, you find that
00116-16 | again, high recognition of the trade character,
00116-17 | but overwhelmingly negative attitudes towards
00116-18 | smoking, so I really don't see any evidence that
00116-19 | that's true for cigarettes.
00116-20 | Q. So you don't think that a child may
00116-21 | develop or store in his or her memory anything
00116-22 | related to cigarette advertising that may effect
00116-23 | their decision to purchase when the opportunity
00116-24 | to purchase cigarettes occurs?
00116-25 | A. The decision to start smoking, the

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00117-01 | decision to take up the product category, I do
00117-02 | not believe that advertising is effecting that
00117-03 | decision, and I think that the literature
00117-04 | supports that very clearly, that it is peer
00117-05 | influence, parental influence, older siblings,
00117-06 | family influences. So I would say that no, the
00117-07 | advertising is not causing a child to start
00117-08 | smoking later in life when they saw the
00117-09 | advertising when they were young.
00117-10 | Q. What do you mean by peer influences?
00117-11 | A. What are you asking?
00117-12 | Q. I'm asking what you mean by -- didn't
00117-13 | you use the term peer influence?
00117-14 | A. That peer influence effects the
00117-15 | decision to start smoking.
00117-16 | Q. I'm asking, what do you mean by peer
00117-17 | influence?
00117-18 | A. Peer influence is generally defined
00117-19 | in these studies that if -- whatever age they are
00117-20 | talking about, but let's say an adolescent or
00117-21 | teenager 15, 16, has friends of the same sex or
00117-22 | friends of the opposite sex who smoke, they are
00117-23 | more likely to smoke. They are likely to be
00117-24 | influenced with their decision to start smoking
00117-25 | by what their friends' activity is. That would

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00118-01 | be peer, or it can be -- that's kind of peer,
00118-02 | that someone their same age. It could be older
00118-03 | siblings. It can be a parental influence. It
00118-04 | can be older friends.
00118-05 | Q. With respect to the parental
00118-06 | influence, the older friends, are you including
00118-07 | that in peer influence?
00118-08 | A. No. I'm sorry.
00118-09 | Q. I was just really focusing on the
00118-10 | term peer influence.
00118-11 | A. Okay.
00118-12 | Q. So if you had a group of ten people
00118-13 | and two of them smoked, it is more likely that in
00118-14 | that group the others might smoke because the
00118-15 | first two are smoking? Is that the peer

00118-16 | influence, within the group?
00118-17 | A. I would say if you had three close
00118-18 | friends --
00118-19 | Q. Right.
00118-20 | A. -- and two of them smoked, if your
00118-21 | two best male friends smoke and you are male 15,
00118-22 | then it is a lot more likely that you will smoke.
00118-23 | Q. Okay. The two that smoked in that
00118-24 | group of three, what influenced them to smoke?
00118-25 | A. Well, again, that could have been an
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00119-01 | older sibling. It could have been a family
00119-02 | influence. It could have been an older friend --
00119-03 | I mean.
00119-04 | Q. But it wasn't cigarette advertising,
00119-05 | in your opinion?
00119-06 | A. No. It was not cigarette
00119-07 | advertising.
00119-08 | Q. Okay. Why don't we go off the video
00119-09 | camera.
00119-10 | VIDEOTAPE OPERATOR: We're going off the
00119-11 | record at 12:08 p.m.
00119-12 | (Discussion off the record.)
00119-13 | VIDEOTAPE OPERATOR: We're back on the
00119-14 | record at 12:11 p.m.
00119-15 | BY MR. KRISTAL:
00119-16 | Q. Let me digress for a moment from the
00119-17 | Mizerski article, and I promise you we'll get
00119-18 | back to it, because I know you spent your time
00119-19 | reading it this morning.
00119-20 | Exhibit 4, which I'm marking now, is
00119-21 | a October 19, 1984 memo, which I believe was
00119-22 | written by yourself, to Mr. G.W. McKenna, and it
00119-23 | is entitled: Re: Younger Adult Smoker
00119-24 | Presentation -- MORE, M-O-R-E, all in caps, Brand
00119-25 | Perspective.
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00120-01 | (Deposition Exhibit 4 was marked
00120-02 | for identification and was annexed hereto.)
00120-03 | BY MR. KRISTAL:
00120-04 | Q. Did you in fact write this memo?
00120-05 | A. Yes.
00120-06 | Q. I notice on the third page you called
00120-07 | it Page 2. Was that just a mistake?
00120-08 | A. I haven't -- oh, Page 2 again. I
00120-09 | imagine that's a typo.
00120-10 | Q. That is your signature, though?
00120-11 | A. That is my signature.
00120-12 | Q. Mr. McKenna was whom at that time at
00120-13 | RJR Reynolds, R.J. Reynolds?
00120-14 | A. I believe his title was director of
00120-15 | marketing.
00120-16 | Q. Now at that point, you were working
00120-17 | with the MORE, M-O-R-E brand of cigarettes,
00120-18 | right?
00120-19 | A. That's correct.
00120-20 | Q. And MORE was a particular cigarette
00120-21 | which was long, thin and had brown paper. It was
00120-22 | a different kind of cigarette.
00120-23 | A. Right. It also had beige, shorter
00120-24 | standard circumference line extensions, but the
00120-25 | key style where most the sales are the long, thin
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00121-01 | brown, 120 millimeter brown, smaller
00121-02 | circumference cigarette.
00121-03 | Q. And you were, according to your
00121-04 | resume at that time, assistant brands manager for
00121-05 | MORE?
00121-06 | A. That's correct.
00121-07 | Q. The memo, as you wrote it in 1994
00121-08 | reads: "This memo provides you with the brand's
00121-09 | perspective on subject presentation. Key
00121-10 | conclusions. Because of high brand loyalty in
00121-11 | the cigarette industry, Fubyas, F-U-B-Y-A-S,
00121-12 | (first usual brand younger adult smokers) have
00121-13 | driven the success of key brands of this
00121-14 | century."
00121-15 | Is that in fact what you wrote at
00121-16 | that time?
00121-17 | A. I wrote that at that time.
00121-18 | Q. Did you believe that at that time?
00121-19 | A. I suspect I believed that at that
00121-20 | time.
00121-21 | Q. Otherwise you wouldn't have written
00121-22 | it?
00121-23 | A. That's right.
00121-24 | Q. The memo that you wrote continues:
00121-25 | "Fubyas 18-20-years-old. Did I read that

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00122-01 | correctly?
00122-02 | A. Yes.
00122-03 | Q. Now if you skip down to the fourth
00122-04 | bullet under key conclusions.
00122-05 | A. Yes. I see that.
00122-06 | Q. I cannot read the second word after
00122-07 | key. Can you make that out?
00122-08 | A. Key --
00122-09 | MR. KACZYNSKI: Needs, maybe.
00122-10 | THE WITNESS: Yeah. It may be needs.
00122-11 | MR. KRISTAL:
00122-12 | Q. "Key needs which differentiate Fubyas
00122-13 | from other smokers are: Want to belong to a
00122-14 | selected peer group." Did I read that correctly?
00122-15 | A. It looks like that. I got a hard
00122-16 | time reading that first word, but I suspect
00122-17 | that's what it is.
00122-18 | Q. And then you have other points under
00122-19 | that: "Want to be seen as different from other
00122-20 | groups. They desire" -- strike that. "The
00122-21 | desire for success and excitement today, not
00122-22 | tomorrow, escaping from life through fantasy or
00122-23 | finding romance in the good old days. The desire
00122-24 | to live on the edge (take risks, stand out in a
00122-25 | crowd, aggressive, rugged, adventurous). The

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00123-01 | desire to stay young, not fall into a rut."
00123-02 | Do they also describe teenagers,
00123-03 | those characteristics, all of them?
00123-04 | A. I think that pretty much it describes
00123-05 | adults. And just on, you know, my own experience
00123-06 | with kids, I would say, do they want to belong to
00123-07 | a selected peer group, probably later on, maybe
00123-08 | not when they are young; three, four and five. I
00123-09 | don't know if they really want to belong to a
00123-10 | peer group. Is this what you are asking me; to
00123-11 | go through each of these?

00123-12| Q. Well, my question was, these
00123-13| characteristics as it relates to teenagers. So
00123-14| I'm not sure if you understood that question,
00123-15| since you gave an answer relating to three, four
00123-16| and 5-year-olds.
00123-17| A. I didn't.
00123-18| Q. Let me do it in a, perhaps, more
00123-19| rigorous manner. The characteristic to want to
00123-20| belong to a selected peer group, that is a
00123-21| characteristic of teenagers; is it not?
00123-22| A. Yes. I think it is.
00123-23| Q. The characteristic to want to be seen
00123-24| as different from other groups, that's a
00123-25| characteristic of a teenager; is it not?

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00124-01| A. I think some teenagers. You know, I
00124-02| wouldn't say that it would apply universally,
00124-03| because these are kind of like --
00124-04| Q. Well, nothing applies universally,
00124-05| does it?
00124-06| A. Right, right. I mean, so I don't
00124-07| think when you say applies to teenagers, I don't
00124-08| think you can say it applies to all teenagers.
00124-09| There are probably some groups of teenagers who
00124-10| want to be seen as different.
00124-11| Q. Well, that's a -- let me use perhaps
00124-12| a different word. A common characteristic of
00124-13| teenagers. Would you agree with that?
00124-14| A. I'm not really sure. I'm not really
00124-15| positive if each group wants to be seen as
00124-16| different from the other group. I don't know.
00124-17| Q. Have you ever -- maybe I asked this
00124-18| earlier, and if I did, I apologize -- studied
00124-19| adolescence psychology?
00124-20| A. No, I have not.
00124-21| Q. Have you ever studied various stages
00124-22| of development through adolescence?
00124-23| A. No, I have not.
00124-24| Q. Is the desire for success and
00124-25| excitement today, not tomorrow, a common

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00125-01| characteristic of teenagers?
00125-02| A. I don't know about the desire for
00125-03| success.
00125-04| Q. Okay. Excitement today but not
00125-05| tomorrow.
00125-06| A. I think excitement, probably. I
00125-07| mean, this is just sort of my opinion, but....
00125-08| Q. That's all I'm asking for.
00125-09| The desire to live on the edge, take
00125-10| risks, stand out in a crowd, aggressive, rugged,
00125-11| adventurous, certainly that would be a common
00125-12| characteristic, at least of teenage males, would
00125-13| it not?
00125-14| A. I don't know if you would call it a
00125-15| common characteristic, no. I would say it
00125-16| certainly characterizes some, but I don't think
00125-17| the majority.
00125-18| Q. And are you basing that on anything
00125-19| other than your -- what are you basing that on?
00125-20| Let me ask you that.
00125-21| A. Just my life experience, because --
00125-22| Q. That's fine.

00125-23 | The desire to stay young.
00125-24 | A. I don't think that describes them.
00125-25 | Q. I'm not asking about all. That's a
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00126-01 | common characteristic of teenagers, isn't it?
00126-02 | A. I don't think so. I think they
00126-03 | desire to be older.
00126-04 | Q. If you look at the next bullet:
00126-05 | "Fubyas are characterized into social groups
00126-06 | which clearly define subgroups to be marketed to:
00126-07 | Conforming-goodie, goodies, preps, GQ's, discos,
00126-08 | nonconforming-rockers, party parties, punkers,
00126-09 | burn-outs." Did I read that correctly?
00126-10 | A. You did read it correctly.
00126-11 | Q. Do those two categories of social
00126-12 | groups also -- are they also categorized into
00126-13 | which teenagers fall?
00126-14 | A. I don't know. I'm sure that all
00126-15 | people, all people of any age probably fall into
00126-16 | conforming or nonconforming. I mean, you know,
00126-17 | that's kind of like, you know, are you awake or
00126-18 | are you asleep. Are you conforming or
00126-19 | nonconforming. So I would believe that all
00126-20 | people either fall in one of those or the other.
00126-21 | Q. Why then did you write: "Fubyas are
00126-22 | categorized into social groups which clearly
00126-23 | define subgroups that can be marketed to:
00126-24 | Conforming, nonconforming." And then you gave
00126-25 | subcategories. Was it the subcategories you were
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00127-01 | referring to?
00127-02 | A. No. I think the key thing was
00127-03 | categorizing people as conforming and
00127-04 | nonconforming, because you are going to do
00127-05 | different kinds of image advertising on products
00127-06 | where people who have a driving want of
00127-07 | conforming versus nonconforming.
00127-08 | Q. But then why wouldn't your statement
00127-09 | be, everyone in the world falls into social
00127-10 | grouping of nonconforming and conforming? That
00127-11 | wouldn't be a specific reason to target Fubyas,
00127-12 | would it?
00127-13 | MR. KACZYNSKI: Objection to form.
00127-14 | BY MR. KRISTAL:
00127-15 | Q. Let me rephrase. It was convoluted.
00127-16 | Your memo is focusing on Fubyas,
00127-17 | correct?
00127-18 | A. It is focusing on younger adult
00127-19 | smoker presentation. That's the subject.
00127-20 | Q. And you write that fubyas are
00127-21 | categorized into social groups which you wrote
00127-22 | conforming and nonconforming, correct?
00127-23 | A. Here is what it says. You know, it
00127-24 | wasn't my definition. This is, as it says here,
00127-25 | younger adult smoker presentation. I went to a
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00128-01 | presentation that was given on younger adult
00128-02 | smokers, and I was summarizing the key
00128-03 | conclusions out of that presentation.
00128-04 | Q. And that was an internal R.J.
00128-05 | Reynolds presentation?
00128-06 | A. Yes.
00128-07 | Q. By a marketing strategy person?

00128-08| A. No. Well, I don't know. I mean,
00128-09| that's sort of your interpretation of a market
00128-10| strategy person.
00128-11| Q. No, no. I'm asking who was the --
00128-12| what was the title or the group that the person
00128-13| making the presentation was in?
00128-14| A. I believe it was Diane Burrows,
00128-15| marketing research person.
00128-16| Q. And then under implications on the
00128-17| second page.
00128-18| A. Yes.
00128-19| Q. You wrote in the third paragraph and
00128-20| underlined it: If MORE became the brand for a
00128-21| Fubyas subgroup, it could reestablish long-term
00128-22| growth." You believed that at that time, did you
00128-23| not?
00128-24| A. I believe at that time I believed
00128-25| that, yes.

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00129-01| Q. Now this marketing strategy or
00129-02| perspective was not adopted for the MORE brand,
00129-03| was it?
00129-04| A. No.
00129-05| Q. This really. In many ways, later
00129-06| became what was adopted for Joe Camel, was it
00129-07| not?
00129-08| A. No.
00129-09| Q. Nothing to do with the Joe Camel?
00129-10| A. No, nothing.
00129-11| Q. No, no. I know this was your
00129-12| thinking presenting this to somebody relating to
00129-13| the MORE brand. Correct?
00129-14| A. No. What this was, again, I'll say
00129-15| what it was. I went to a presentation --
00129-16| Q. Right.
00129-17| A. -- about younger adults that was
00129-18| given by a marketing research person. You know,
00129-19| I had only been with the company two years, so I
00129-20| go to the presentation, I come back and I
00129-21| summarize what I think they said, key
00129-22| conclusions, and then I say, "here could be some
00129-23| implications for the MORE brand." That's it.
00129-24| But it had nothing to do with Camel. Absolutely
00129-25| nothing.

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00130-01| Q. The --
00130-02| A. Not then and not later.
00130-03| Q. Two years later, you became involved
00130-04| as assistant brand manager of Camel, correct?
00130-05| A. Yes. I think that was like -- let me
00130-06| take a quick look here. You are talking about
00130-07| October of '84 is when I became assistant brand
00130-08| manager on Camel.
00130-09| Q. So in other words, it was the same
00130-10| month that you wrote this article -- I'm sorry,
00130-11| this memo, relating to the MORE brand, is the
00130-12| month you became assistant brand manager for
00130-13| Camel?
00130-14| A. Well, it would have been obviously
00130-15| after I wrote that, because I wouldn't have
00130-16| written something on MORE while I was still in
00130-17| Camel. But it says, you know, it changed
00130-18| sometime during the month, so it must have been

00130-19| probably one of the last things I did.
00130-20| But I was on MORE through October 2,
00130-21| so obviously the months are overlapping, so
00130-22| sometime in the month of October I got moved, and
00130-23| it would have been after I wrote this because I
00130-24| would not have been writing something about MORE
00130-25| while I was on Camel.

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00131-01| Q. I'm really not trying to be
00131-02| facetious, although it may sound it.
00131-03| Did you forget what you had done on
00131-04| the MORE brand in terms of research in terms of
00131-05| presentations you attended when you switched over
00131-06| to Camel?
00131-07| MR. KACZYNSKI: Object to the form.
00131-08| THE WITNESS: Well, you know, obviously you
00131-09| don't remember everything you did. But what do
00131-10| you mean? Did I try and wipe my mind clear?
00131-11| BY MR. KRISTAL:
00131-12| Q. Yes.
00131-13| A. No.
00131-14| (Deposition Exhibit 5 was marked
00131-15| for identification and is annexed hereto.)
00131-16| BY MR. KRISTAL:
00131-17| Q. Now let me mark as Exhibit 5, a memo
00131-18| dated March 12th, 1986, and this is from R.T.
00131-19| Caufield, C-A-U-F-I-E-L-D, to D.N. Iauco. Now,
00131-20| who is Rick Caufield?
00131-21| A. He was the senior brand manager for
00131-22| Camel, I think, at this time.
00131-23| Q. And you took over as senior and brand
00131-24| manager for Camel after Mr. Caufield, correct?
00131-25| You were the next senior brand manager?

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00132-01| A. Yes.
00132-02| Q. And according to your resume, that
00132-03| was in June of 1987?
00132-04| A. That's correct.
00132-05| Q. Now Mr. Iauco, what was his position
00132-06| at RJR in March of 1986?
00132-07| A. Iauco.
00132-08| Q. He's upstairs being deposed, I
00132-09| believe, as we speak.
00132-10| MR. KACZYNSKI: Right above us.
00132-11| THE WITNESS: His position, I think, was
00132-12| marketing director or director of marketing.
00132-13| BY MR. KRISTAL:
00132-14| Q. So this is a memo from the senior
00132-15| brand manager for Camel to the marketing
00132-16| director, whatever his exact title was?
00132-17| A. That's right.
00132-18| Q. And then there are a number of people
00132-19| listed as being copied on this memo; Fran
00132-20| Creighton, Leary, Marlow, Pennell, Schweig,
00132-21| Wilkin. Some of those are RJR employees and some
00132-22| were employees of outside ad agencies?
00132-23| A. Yes.
00132-24| Q. Which was -- the ad agency was
00132-25| McGann-Erickson?

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00133-01| A. Yes.
00133-02| Q. Which of those six people that I just
00133-03| mentioned, were members of McCann-Erickson?

00133-04| A. Mr. B W. Schweig would have been
00133-05| McCann Erickson. I don't know -- I don't
00133-06| remember S.M. Marlow. That just doesn't ring a
00133-07| bell, but I think I recognize the others as RJR
00133-08| employees.
00133-09| Q. And how many of the others, who are
00133-10| RJR employees, worked with you when you became
00133-11| senior brand manager for Camel?
00133-12| A. Worked directly for me?
00133-13| Q. Or continued working on Camel.
00133-14| A. Okay. Well, Fran -- F.E. Creighton
00133-15| continued to work on Camel. I don't think any of
00133-16| the others. Well, Barry Schweig. Did you mean
00133-17| RJR employees or --
00133-18| Q. The question was RJR. But Barry
00133-19| Schweig did work with you in conjunction with his
00133-20| work at McCann-Erickson on the Joe Camel
00133-21| campaign?
00133-22| A. That's correct.
00133-23| Q. The title of this memo that Mr.
00133-24| Caufield wrote in March of 1986 is: "Camel New
00133-25| Advertising Campaign Development." Were you

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00134-01| aware before you became senior brand manager for
00134-02| Camel in July of 1987 -- I'm sorry, June of 1987,
00134-03| that R.J. Reynolds was thinking of a
00134-04| repositioning or developing a new ad campaign for
00134-05| Camel?
00134-06| A. Yes.
00134-07| Q. And the ad campaign at that time,
00134-08| prior to Joe Camel, was something called the Bob
00134-09| Beck campaign, right?
00134-10| A. Yes.
00134-11| Q. That was sort of a knockoff of the
00134-12| Marlboro man, he was kind of a curly, blonde
00134-13| haired guy that looked like Tom Sellick kind of
00134-14| with blonde hair and smoking -- that campaign; is
00134-15| that right?
00134-16| MR. KACZYNSKI: Object to the form. I don't
00134-17| think Tom Sellick would find it flattering.
00134-18| BY MR. KRISTAL:
00134-19| Q. What was the Bob Beck campaign?
00134-20| A. The Bob Beck campaign was this guy
00134-21| named Bob Beck -- that was his actual name -- who
00134-22| usually appeared alone in the ads doing kind of
00134-23| rugged, adventurous things. And, I don't think
00134-24| it is an unfair characterization to say it was
00134-25| sort of a bad imitation of the Marlboro campaign.

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00135-01| Q. There was some dissatisfaction at
00135-02| R. J. Reynolds with that campaign. I have some
00135-03| documents. I think the phrases were used, it was
00135-04| old, it just wasn't vibrant enough, vital enough.
00135-05| That kind of feeling.
00135-06| A. There were many problems with the
00135-07| campaign. Is that what you are asking me, what
00135-08| the problems were?
00135-09| Q. Yes.
00135-10| A. I mean, I think the first problem is
00135-11| that it was essentially a rip-off or a bad
00135-12| imitation of Marlboro, and you need to have your
00135-13| own campaign, not have an imitation of the
00135-14| competition.

00135-15| Secondly, it tended to reinforce
00135-16| what -- a problem that Camel had, which was
00135-17| people thought of Camel as too harsh of a
00135-18| cigarette and that it only had nonfiltered
00135-19| styles, and that campaign re-enforced this,
00135-20| because it was always these rugged outdoor
00135-21| scenes, and so people thought, well, Camel is a
00135-22| harsh cigarette, which it wasn't, but everybody
00135-23| thought it was and plus, it didn't really
00135-24| reinforce that Camel had filtered styles. People
00135-25| were still thinking, well, yes, Camel, all Camel

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00136-01| has is the nonfiltered style, and then on top of
00136-02| that, this whole image of this guy out there made
00136-03| it -- left people feeling that Camel was an old
00136-04| brand, you know, old brand and --

00136-05| Q. Old and in the way?

00136-06| A. Well, old. You know, so it wasn't
00136-07| good product perceptions. It didn't do anything
00136-08| to modernize the brand, and it really wasn't
00136-09| helping, you know, get adult competitive smokers
00136-10| to switch to Camel. It just wasn't playing the
00136-11| role it should have in the brand.

00136-12| Q. Now this memo from Caulfield is
00136-13| referencing "brand group's recommendation in
00136-14| covering key aspects of Camel's new advertising
00136-15| campaign development project." Right?

00136-16| A. Yes. That's what it says.

00136-17| Q. And the item is target audience.

00136-18| A. Yes.

00136-19| Q. And there is a recommendation that
00136-20| there be a new creative effort to develop
00136-21| advertising, highly relevant and appealing and
00136-22| motivational to 18 to 24 male smokers. Correct?

00136-23| A. That's what it says.

00136-24| Q. I assume that means 18 to 24-year-old
00136-25| male smokers. You were not changing a campaign

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00137-01| to get two dozen new smokers, were you?

00137-02| A. Right.

00137-03| Q. The memo then reads --

00137-04| MR. KACZYNSKI: It hasn't come to that yet.

00137-05| THE WITNESS: I'm sorry.

00137-06| MR. KRISTAL: We're working on it.

00137-07| BY MR. KRISTAL:

00137-08| Q. "This recommendation is perpetuating
00137-09| Marlboro's growth." I'm sorry, I skipped on.

00137-10| "This recommendation is based on
00137-11| consideration of the marketplace dynamics which
00137-12| are perpetuating Marlboro's growth (i.e., brand
00137-13| loyalty and peer influence) and which strongly
00137-14| suggests that repositioning Camel as the relevant
00137-15| brand choice for young adult smokers can be
00137-16| critical to generating sustained volume growth."

00137-17| Do you see that?

00137-18| A. Yes. I see that.

00137-19| Q. Is it fair to say, that Mr. Caulfield
00137-20| was aware that the marketplace dynamics
00137-21| perpetuating Marlboro's growth was brand loyalty
00137-22| and peer influence? That's what he writes here,
00137-23| is it not?

00137-24| A. That's what he says here.

00137-25| Q. Do you disagree with that at that

00138-01 | time frame?
00138-02 | A. I think that's overly simplistic, so
00138-03 | I don't agree with it. I mean, really, for any
00138-04 | brand, and Marlboro in particular, goodness knows
00138-05 | I've studied it a lot, there are many things that
00138-06 | drove its growth. First of all --
00138-07 | Q. I'm just asking you if you agree or
00138-08 | disagree. I don't need to know right now why.
00138-09 | A. Okay.
00138-10 | Q. I don't mean to be rude, I just want
00138-11 | to move this along.
00138-12 | A. Okay. So I disagree there.
00138-13 | Q. The number two item on this memo from
00138-14 | Mr. Caufield is advertising objective. He
00138-15 | writes: "Overall, Camel advertising will be
00138-16 | directed towards using peers acceptance/influence
00138-17 | to provide the motivation for target smokers to
00138-18 | select Camel." Do you see that?
00138-19 | A. Yes. I see that.
00138-20 | Q. Am I correct that advertising can be
00138-21 | directed towards using peer acceptance/influence
00138-22 | to provide motivation?
00138-23 | A. Well, you know, that's a very
00138-24 | convoluted statement. I think if you go to the
00138-25 | second sentence where it says specifically -- in

00139-01 | other words, what he means is that: "Advertising
00139-02 | will be developed with the objective of
00139-03 | convincing target smokers that by selecting Camel
00139-04 | as their usual brand, they will project an image
00139-05 | that will enhance their acceptance among peers."
00139-06 | I agree with that statement, which
00139-07 | is, you -- part of what is about a cigarette
00139-08 | brand is the image of that brand, and so whether
00139-09 | you buy that brand, it says something about you
00139-10 | to the other people around you, and that's --
00139-11 | that is a role that advertising plays, in that it
00139-12 | creates an image. You buy the brand and buy into
00139-13 | that image. When other people see you with the
00139-14 | brand and they know that's the advertising or
00139-15 | image the brand has, then they form opinions
00139-16 | about you because of it.
00139-17 | Q. And the individual thing the peer
00139-18 | group is trying to enhancing his or her
00139-19 | acceptance within the peer group, correct, by
00139-20 | their image?
00139-21 | A. Well, sure. You want to be accepted
00139-22 | by your friends, of course.
00139-23 | Q. And one of the ways of doing that
00139-24 | here is, you want to project an image that will
00139-25 | enhance, as it says here, acceptance among their

00140-01 | peers?
00140-02 | A. Sure. I think that's true.
00140-03 | Q. The Camel ad objective, Camel ad
00140-04 | campaign objective that he's talking about is to
00140-05 | try to have the brand project an image that will
00140-06 | have 18 to 24-year-old male smokers believe that
00140-07 | that image will make them more acceptable amongst
00140-08 | their peers. Isn't that what he's saying?
00140-09 | MR. KACZYNSKI: Object to the form.
00140-10 | THE WITNESS: Yeah. What it says is, that

00140-11 | the advertising will convince target smokers that
00140-12 | by selecting Camel as their usual brand.
00140-13 | MR. KRISTAL:
00140-14 | Q. Right.
00140-15 | A. That's important, that you are
00140-16 | selecting Camel as your usual brand. They will
00140-17 | project an image that will enhance their
00140-18 | acceptance. In other words, think of it this
00140-19 | way, in its true --
00140-20 | Q. Their acceptance where?
00140-21 | A. Among their peers. Excuse me.
00140-22 | So you have to think of it this way:
00140-23 | It is no different than in my professional life,
00140-24 | you know, there is certain clothes I could buy
00140-25 | that my peers would look at and go, (indicating)

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00141-01 | not so great. There is other clothes you could
00141-02 | buy and your peers would look at and say, well,
00141-03 | she's obviously wearing good clothes. So the
00141-04 | brand you buy, any brand, reflects on you, and so
00141-05 | you want to create an image that people -- and
00141-06 | that was part of the problem with Bob Beck. You
00141-07 | get that Bob Beck advertising out there, you
00141-08 | select Camel as your brand and people think of
00141-09 | this harsh cigarette and you want them to think
00141-10 | of a smooth cigarette, so it doesn't enhance your
00141-11 | image because people are thinking, well, you made
00141-12 | a dumb choice, it is a harsh cigarette.
00141-13 | Q. Now the Joe Camel ad campaign had not
00141-14 | started as of March of 1986, correct? That was
00141-15 | only after you became senior brand manager for
00141-16 | Camel after June of '87.
00141-17 | A. Yeah. The actual campaign started
00141-18 | running in 1988, and I developed it in 1987.
00141-19 | This is --
00141-20 | Q. Would you agree that the Joe Camel
00141-21 | campaign had as one of its, I guess, objectives
00141-22 | as Mr. Caufield calls it, that kind of projection
00141-23 | of brand image?
00141-24 | A. No. Because like this is to me,
00141-25 | common sense, that if you -- if I create an image

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00142-01 | that convinces you to buy the brand, to switch to
00142-02 | the brand, to stay with the brand if you are a
00142-03 | loyal smoker, then it is obvious that you are
00142-04 | going to think highly of that image and other
00142-05 | people -- it reflects well on you that you made a
00142-06 | good decision, but that was not the objective of
00142-07 | our advertising, and I would never word that as
00142-08 | the objective. I mean, I would not say that
00142-09 | that's the objective of the advertising. Now you
00142-10 | could say that's one piece of it. You want that
00142-11 | to be an outcome.
00142-12 | Q. That's fair then. One of the
00142-13 | outcomes you are looking for is brand image when
00142-14 | you do advertising?
00142-15 | A. Yes. Exactly.
00142-16 | Q. And one of the outcomes with the Joe
00142-17 | Camel campaign was to have a brand image among
00142-18 | the 18 to 24-year-old male smokers that would
00142-19 | enhance their acceptance among their peers?
00142-20 | A. I would say the objective with any
00142-21 | campaign you do for a brand image is to -- that

00142-22| the other people around that person think they
00142-23| have made a good choice. It enhances their
00142-24| image. I think that's true across the board. It
00142-25| is not such a specific advertising objective, it

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00143-01| is just true. You know, specific --
00143-02| Q. That would apply to 30-year-olds,
00143-03| 50-year-olds, 60-year-olds, whatever group you
00143-04| run in?
00143-05| A. Right. Exactly. If I buy Liz
00143-06| Claiborne and everybody at work thinks that's a
00143-07| crummy designer, it is going to reflect badly on
00143-08| me.

00143-09| Q. But the focus of the Joe Camel
00143-10| campaign was the image of the 18 to 24-year-old
00143-11| smoker, particularly males, correct?

00143-12| A. Well, the primary -- when we
00143-13| developed the Joe Camel campaign, it was not
00143-14| this, because this is before that. What we had
00143-15| was the primary target was 18 to 24 male
00143-16| competitive smokers. 25 to 34 was the secondary
00143-17| targeted male competitive smokers, and then
00143-18| thirdly was Camel smokers, 18 plus, so it was all
00143-19| three of those. Now the primary target was 18 to
00143-20| 24, competitive adult smoker, but 25 to 34 was
00143-21| secondary target competitive adult smokers.

00143-22| Q. Do you believe you were successful in
00143-23| enhancing the brand's image among 18 to
00143-24| 24-year-old smokers such that it enhanced their
00143-25| acceptance within their peer group with the Joe

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00144-01| Camel ad campaign?

00144-02| A. I'm not sure what you are asking.
00144-03| Could you say it again?

00144-04| Q. Sure. One of the things you are
00144-05| doing when you were designing the Joe Camel
00144-06| campaign is, you wanted to project an image that
00144-07| the 18 to 24-year-old smokers believed would
00144-08| enhance their image within their peer group, not
00144-09| within a 60-year-old peer group, right?

00144-10| A. Well, right.

00144-11| Q. Am I missing something?

00144-12| A. No, no. I think I understand what
00144-13| you are saying. Yes. And that was true whether
00144-14| they were 18 to 24, 25 to 34. Really, Camel
00144-15| smokers 18 plus who we talked to as well. It had
00144-16| to meet all of those objectives.

00144-17| Q. Do you believe that an image that a
00144-18| 18 to 24-year-old person would believe, would
00144-19| accept would enhance their acceptance from their
00144-20| peer group would be an image that 13, 14, 15,
00144-21| 16-year-olds would believe would enhance their
00144-22| image within their peer group?

00144-23| A. You would have to do testing to know
00144-24| that. But again, that would be about brand
00144-25| choice. That would not be about the decision to

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00145-01| start smoking. That would be about brand choice,
00145-02| and you would have to do that research to know.

00145-03| MR. KACZYNSKI: Lunchtime?

00145-04| VIDEOTAPE OPERATOR: We're going off the
00145-05| record at 12:40 p.m.

00145-06| (The luncheon recess was taken at

|00146-01| APPEARANCES OF COUNSEL:
|00146-02| (P.M. SESSION)
|00146-03| JERRY KRISTAL, ESQ.
|00146-04| STEPHEN J. KACZYNSKI, ESQ.
|00146-05| CATHERINE B. STEVENS, ESQ.
|00146-06| ALSO PRESENT:
|00146-07| MARTIN NOBREGA, VIDEO OPERATOR
|00146-08| REPORTED BY:
|00146-09| JANE F. ALLEN, RPR

|00147-01| (The deposition of LYNN BEASLEY
|00147-02| was reconvened at 1:32 P.M.)
|00147-03| LYNN BEASLEY,
|00147-04| having been previously duly sworn, testified
|00147-05| further as follows:
|00147-06| VIDEOTAPE OPERATOR: We're back on the
|00147-07| record at 1:32 p.m.
|00147-08| (Deposition Exhibit 6 was marked
|00147-09| for identification and is annexed hereto.)
|00147-10| EXAMINATION (CONTINUING)
|00147-11| BY MR. KRISTAL
|00147-12| Q. Good afternoon.
|00147-13| A. Good afternoon.
|00147-14| Q. I hope lunch was okay.
|00147-15| Before we get back to the Mizerski
|00147-16| article, let me just give you what I've marked as
|00147-17| Exhibit 6, which is entitled Marketing Research
|00147-18| Report, February 1, 1985, Camel Younger Adult
|00147-19| Smoker Focus Groups, from Alicia Nance Mitchell
|00147-20| to R.T. Caufield with copies to some other folks.
|00147-21| Who was Miss Mitchell in 1984 at RJR?

|00148-01| A. I believe she was in marketing
|00148-02| research.
|00148-03| Q. And Mr. Caufield we've already
|00148-04| discussed. He was the brand manager at that
|00148-05| time?
|00148-06| A. I think he was senior brand manager
|00148-07| at the time.
|00148-08| Q. One of the copies went to a Mr. Baker
|00148-09| at McCann-Erickson. Did you know Mr. Baker?
|00148-10| A. I might have. The name doesn't ring
|00148-11| a bell.
|00148-12| Q. The other individuals; Hall, Cox,
|00148-13| Murphy and Winebrenner, did they at all work with
|00148-14| you on the Joe Camel campaign? Any of those
|00148-15| individuals.
|00148-16| A. As I recall, Mr. Winebrenner was head
|00148-17| of marketing at the time, so he would have been
|00148-18| there. He didn't work on the development with
|00148-19| me, but he would have approved it.
|00148-20| Q. Let me see if I understand that.
|00148-21| When you were subsequently senior brand manager
|00148-22| for Camel when you developed the Joe Camel
|00148-23| campaign, Winebrenner would have been in a
|00148-24| position to review and approve the campaign?
|00148-25| A. Yes.

|00149-01| Q. And the others?
|00149-02| A. They were in marketing research, but
|00149-03| directly involved, no.

00149-04| Q. Now, you have been involved in focus
00149-05| groups, correct?
00149-06| A. I've attended focus groups. Is that
00149-07| what you are asking?
00149-08| Q. Yes.
00149-09| A. Yes.
00149-10| Q. And you, in terms of attending focus
00149-11| groups, use information generated from focus
00149-12| groups to see if proposed ad campaigns are
00149-13| striking a chord, achieving the objectives,
00149-14| whatever they are that you set out. Is that fair
00149-15| to say?
00149-16| A. Yes.
00149-17| Q. Do you utilize -- well, maybe this is
00149-18| begging the question. I assume you utilize the
00149-19| information you get from the focus groups in
00149-20| refining any ad campaign. Is that fair to say?
00149-21| A. Well, for a specific set of focus
00149-22| groups on a specific campaign, we use that
00149-23| information in refining the campaign. That's
00149-24| true.
00149-25| Q. Can you give me a good statement of

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00150-01| how many focus groups you participated in with
00150-02| respect to the development of the Joe Camel
00150-03| campaign itself?
00150-04| A. Can I give you a good estimate?
00150-05| Q. I mean, was it one or two? Was it
00150-06| several dozen?
00150-07| A. How are you defining -- one group --
00150-08| is a focus group one group to you? That's what
00150-09| you are saying?
00150-10| Q. You meet with a group of people and
00150-11| you show them things, you ask them questions.
00150-12| A. Yes.
00150-13| Q. That I would consider a group, one
00150-14| group.
00150-15| A. Okay. Estimate wise, I would say --
00150-16| let me just kind of go through it. Maybe 25
00150-17| to -- probably around that, I would say. It's an
00150-18| estimate.
00150-19| Q. Now if I understand, the beginning of
00150-20| the Joe Camel ad campaign is that you had some
00150-21| posters from something called the French Camel
00150-22| that you showed to either a focus group or a few
00150-23| focus groups and there was a very positive
00150-24| reaction, and that kind of planted the seed in
00150-25| your mind, this is something we need to look at

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00151-01| and that ultimately evolved into the Joe Camel ad
00151-02| campaign.
00151-03| A. There was a poster, and it was shown
00151-04| to some groups and there was an extremely
00151-05| positive reaction and then that's when I thought,
00151-06| hey, I think we could turn this idea into a
00151-07| campaign to celebrate Camels' 75th birthday.
00151-08| Q. And the French Camel poster was a
00151-09| drawing of really just the head of a camel, kind
00151-10| of bursting through a pack, it was kind of ripped
00151-11| paper. Is that the poster I'm thinking of?
00151-12| Well, if you look in Exhibit 6,
00151-13| towards the back, there are samples that were
00151-14| used with this focus group. It is a little hard

00151-15 | to see because of copying, but if you look at
00151-16 | Bates number 46650 -- yeah, you have it good. It
00151-17 | is hard to see, but is that the camel's head
00151-18 | smoking a cigarette, kind of coming through a
00151-19 | pack? I don't know. How would you describe it?
00151-20 | A. Yes. And I don't think that this is
00151-21 | the original French poster, no, that we used.
00151-22 | Q. Okay. But this was part of it? It
00151-23 | even says up top, French Camels.
00151-24 | A. Well, they called it that, but you
00151-25 | asked specifically about the poster we used.

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00152-01 | Q. Right.
00152-02 | A. This was not it.
00152-03 | Q. What did -- there are two other what
00152-04 | are called French Camel posters in this exhibit.
00152-05 | One on the page before --
00152-06 | A. See, the difference is --
00152-07 | Q. And one on the page after.
00152-08 | A. You are talking about a specific
00152-09 | poster that was run in France at some point.
00152-10 | Q. No, no, no. Maybe I'm not.
00152-11 | A. It was an actual poster.
00152-12 | Q. I'm not making myself clear. What
00152-13 | you showed to the focus group, what you showed to
00152-14 | the focus group that got the positive reaction,
00152-15 | was that one of these three?
00152-16 | A. No.
00152-17 | Q. What did that look like? Just
00152-18 | generally.
00152-19 | A. It was closest to this one
00152-20 | (indicating).
00152-21 | Q. The one with the smoking Camel.
00152-22 | A. Right. But that isn't it. I mean,
00152-23 | it was the head of a camel, but this isn't it.
00152-24 | Q. Was the head of the camel poking
00152-25 | through the pack in the one that you used?

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00153-01 | A. I got to look at it again. I can't
00153-02 | remember.
00153-03 | Q. Did the head of the camel have a
00153-04 | cigarette in the camel's mouth?
00153-05 | A. I think so.
00153-06 | Q. Now this, is it not, a report from a
00153-07 | focus group prior to your becoming senior brand
00153-08 | manager for Camel?
00153-09 | A. That's correct.
00153-10 | Q. Were there similar documents --
00153-11 | marketing research reports generated for the
00153-12 | focus groups that you participated in for the Joe
00153-13 | Camel ad campaign?
00153-14 | A. There is for some of them. For some
00153-15 | of them there isn't. Sometimes we have reports
00153-16 | for focus groups, sometimes we don't. If we have
00153-17 | a focus group, we all agree it is pretty clear,
00153-18 | there is no reason to do a report. But maybe if
00153-19 | it is detailed or some things that there was
00153-20 | disagreement on, then the marketing research
00153-21 | person decides to write a report.
00153-22 | Q. So there is no set policy one way or
00153-23 | the other?
00153-24 | A. Right. You can write a report, you
00153-25 | cannot write a report.

00154-01 Q. In this report, if you turn -- and I
00154-02 know it is hard to read, the first page of the
00154-03 text. Up top it reads: "Camel younger adult
00154-04 smoker focus groups." Then the first heading is
00154-05 background: "Due to the importance of younger
00154-06 adult smokers, Camel has developed a new
00154-07 advertising campaign which is directed solely
00154-08 towards this group." Do you see that?

00154-09 A. I see that, yes.

00154-10 Q. And then the beginning of the next
00154-11 paragraph says: "Management requested that the
00154-12 younger adult campaign be taken to focus groups
00154-13 in order to obtain consumer reaction to the new
00154-14 ads." Do you see that?

00154-15 A. Yes, I do.

00154-16 Q. And then it describes six groups that
00154-17 were conducted, the rest of that paragraph. Is
00154-18 that fair to say?

00154-19 A. Yes. Although I have to tell you,
00154-20 maybe you have a better copy than me, but like
00154-21 the words are almost black. I can't hardly read
00154-22 them.

00154-23 Q. Take a look at mine.

00154-24 A. That's better, a little. Not a lot,
00154-25 huh? Okay.

00155-01 Q. And then there is something called
00155-02 ingoing hypotheses. Do you see that?

00155-03 A. Yes.

00155-04 Q. The first one, without reading it,
00155-05 basically was to try to change the negative
00155-06 perceptions of Camel. I think we've spoken about
00155-07 that. Right?

00155-08 A. Yes.

00155-09 Q. The second one is, "the younger adult
00155-10 campaign will be viewed as exciting, likeable and
00155-11 relevant." The third one is, "the younger adult
00155-12 campaign would be more relevant and appealing to
00155-13 younger adult smokers than the current world
00155-14 campaign for evolutionary campaign." And then
00155-15 the fourth incoming hypotheses -- ingoing
00155-16 hypotheses is, "the new campaign goes much
00155-17 further in reaching the" -- can you read that on
00155-18 yours?

00155-19 A. Reaching the boundaries.

00155-20 Q. "Boundaries of what is acceptable to
00155-21 younger adult smokers than the current campaign."
00155-22 Did I read those correctly?

00155-23 A. Yes.

00155-24 Q. If you turn to the next page, the
00155-25 first full paragraph it says: "Of the six

00156-01 themes, 'Go With It' and the 'French Camels,'
00156-02 appear to attract the most positive attention."
00156-03 Do you see that?

00156-04 A. Yes, I do.

00156-05 Q. So apparently if you want to flip
00156-06 through the kind of the demonstrative, the
00156-07 posters or pictures in the back, there were
00156-08 several different themes that were being tested
00156-09 for focus groups that were being asked questions
00156-10 about. Is this fair to say?

00156-11 A. Yes.
00156-12 Q. I just want to look at the second one
00156-13 now, the French Camel. Under French Camel it
00156-14 reads: "These ads were well received due to the
00156-15 fun/humor aspects of the cartoons." Do you see
00156-16 that?
00156-17 A. Yes, I do.
00156-18 Q. And that was pretty much a very --
00156-19 not pretty much, it was a very similar reaction
00156-20 to the Camel posters you showed the focus groups
00156-21 almost two years later?
00156-22 A. Yes. It wasn't Camel posters. It
00156-23 was the Joe Camel campaign celebrating the 75th
00156-24 birthday.
00156-25 Q. You misunderstood what I asked, and I

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00157-01 apologize. The focus group wherein you showed
00157-02 them a poster --
00157-03 A. Oh.
00157-04 Q. -- which triggered the Joe Camel
00157-05 campaign, which was similar to one of the
00157-06 pictures back here, got the same reaction from
00157-07 the focus group. It was well received due to the
00157-08 fun/humor aspects. Right? I mean is that --
00157-09 A. Right. It wasn't, of course, just
00157-10 that.
00157-11 Q. No, no.
00157-12 A. What, you know, the groups really
00157-13 liked about it was that not only was it fun, but
00157-14 it was so clever, because it was a Camel and the
00157-15 name of the brand was Camel, and he was smoking,
00157-16 and obviously it was for Camel cigarettes, and
00157-17 they just thought that was very clever and
00157-18 entertaining.
00157-19 Q. This document from 1985 from this
00157-20 focus group continues: "More than any other
00157-21 theme, the French Camel appears to attract the
00157-22 respondents' attention. The main drawbacks of
00157-23 these executions were that: One, they may be
00157-24 more appealing to an even younger age group and
00157-25 two, there is some confusion as to the meaning

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00158-01 behind them. Some focus group members were
00158-02 hard-pressed to explain the purpose of the ads."
00158-03 Did I read that correctly?
00158-04 A. Yes. You read that correctly.
00158-05 Q. Did anybody tell you that two years
00158-06 before you developed the Joe Camel campaign, that
00158-07 one of the drawbacks, as articulated in this
00158-08 focus group, was that it may be more appealing to
00158-09 an even younger age group?
00158-10 A. This is not the Joe Camel campaign.
00158-11 Q. I understand that.
00158-12 A. I thought that was your question, did
00158-13 somebody tell me that the Joe Camel campaign, and
00158-14 this isn't the Joe Camel campaign. These are
00158-15 executions tried off that French Camel poster,
00158-16 just like I did when I developed the Joe Camel
00158-17 campaign. They are two different things.
00158-18 No one told me this, but I am not
00158-19 surprised by the outcome, because we tried many,
00158-20 many, many different executions for the Joe Camel
00158-21 campaign, and we tried this punk look that they

00158-22| have back here and we found the same outcome,
00158-23| that depending upon how you portray the Camel,
00158-24| the focus groups which we asked, younger adult
00158-25| smokers, 18 to 24, do you think this is for

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00159-01| people your age or people younger than you, and
00159-02| I'm sure they asked a similar question in this,
00159-03| and they would say it is for people younger than
00159-04| them.

00159-05| Well, we tried -- we tried punk
00159-06| camels and tried other things. When we would ask
00159-07| younger adult smokers, they would say I think
00159-08| that's for people younger than me and we would
00159-09| eliminate them. So while no one told me this,
00159-10| this doesn't surprise me, because it is certainly
00159-11| possible to execute it so that people say it is
00159-12| for people younger than me. Now that was not the
00159-13| response on the executions we ran.

00159-14| Q. Ultimately for the what became Joe
00159-15| Camel?

00159-16| A. For the Joe Camel campaign.

00159-17| Q. The -- am I understanding you to say
00159-18| that you took it to heart and you relied on the
00159-19| focus group telling you that the punk-haired
00159-20| camel looked too young and not going in that
00159-21| direction?

00159-22| A. Yes.

00159-23| Q. And those focus groups were primarily
00159-24| the 18 to 24-year-old prime group?

00159-25| A. 18 to 24 younger adult male

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00160-01| competitive smokers.

00160-02| Q. Did you ever, before going ahead with
00160-03| the campaign, get the advice of any professional
00160-04| as to whether or not the final version of Joe
00160-05| Camel might appeal to people younger than the 18
00160-06| to 24-year-old?

00160-07| MR. KACZYNSKI: Objection, vague.

00160-08| THE WITNESS: You know, what we -- what we
00160-09| did is, we did research and we did the focus
00160-10| group research and we looked for adult execution.
00160-11| In terms of limiting appeal to adults, it isn't
00160-12| possible to completely eliminate any appeal that
00160-13| might be beyond that, but we take extreme
00160-14| measures to limit the appeal, not just screening
00160-15| the executions with focus groups, but we look for
00160-16| adult situations. We look for adult activities.
00160-17| Any model that was based to draw Joe Camel in
00160-18| anything, was based on a model over 25.

00160-19| Where we obviously limit where we place our
00160-20| advertising; television, radio on schools, we
00160-21| don't do any of that to limit that appeal, and I
00160-22| think that's a reasonable way to approach it.

00160-23| MR. KRISTAL: This is purely legal stuff,
00160-24| stuff I'm about to do. I move to strike the
00160-25| nonresponsive portion of the answer. It is just

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00161-01| a legal matter for the record here.

00161-02| BY MR. KRISTAL:

00161-03| Q. The question, and maybe you
00161-04| misunderstood it, I don't know. Here is my
00161-05| question: Did R.J. Reynolds, before initiating
00161-06| the Joe Camel campaign, speak to any

00161-07 | psychologist, psychiatrist, child development
00161-08 | specialists, any professional in that field, to
00161-09 | get their input as to who might be attracted to
00161-10 | the Joe Camel campaign?

00161-11 | A. No. And I think that would be
00161-12 | inappropriate. I think anything we did, that
00161-13 | went to someone to ask about the appeal of our
00161-14 | advertising among children, would be
00161-15 | characterized as our attempt to insure that it
00161-16 | appealed to children, that we were using it for
00161-17 | that purpose.

00161-18 | If we had anything, anything, in our
00161-19 | files about going to people to find out about
00161-20 | underage appeal of our advertising, then we would
00161-21 | be sitting here today talking about, and you used
00161-22 | that for the marketing purposes, didn't you. I
00161-23 | mean, that's what it would be. And I think
00161-24 | that's inappropriate.

00161-25 | I think that we take appropriate

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00162-01 | steps to the extent possible to insure that the
00162-02 | campaign appeals to adults, and where possible,
00162-03 | eliminate executions that adults see as appealing
00162-04 | to people more younger than them.

00162-05 | MR. KRISTAL: Again, I move to strike the
00162-06 | nonresponsive portions of the answer.

00162-07 | BY MR. KRISTAL:

00162-08 | Q. You would only be in that situation
00162-09 | of having to defend a decision if it was
00162-10 | something that was done contrary to the advice of
00162-11 | the professional.

00162-12 | MR. KACZYNSKI: Objection.

00162-13 | BY MR. KRISTAL:

00162-14 | Q. Do you follow what I am saying? If
00162-15 | you want to -- in other words, if you went to a
00162-16 | psychologist or a psychiatrist or child
00162-17 | development specialist and they said you can't
00162-18 | use this campaign because it is going to attract
00162-19 | teenagers, you would only be in the position of
00162-20 | having to defend your use of it if you didn't
00162-21 | accept their advice and went ahead and did it,
00162-22 | whereas if you accepted their advice and didn't
00162-23 | proceed with the campaign, you could use it to
00162-24 | say, see, we ran it by professionals. Do you
00162-25 | follow what I am saying?

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00163-01 | MR. KACZYNSKI: Objection.

00163-02 | THE WITNESS: I follow what you are saying,
00163-03 | and I completely disagree.

00163-04 | BY MR. KRISTAL:

00163-05 | Q. Let me take it one-step at a time.
00163-06 | If you went to professionals and they told you
00163-07 | this character is going to attract not the people
00163-08 | -- or possibly including the people you are
00163-09 | trying to attract, but it is going to attract
00163-10 | young teenagers --

00163-11 | A. Attract how so? What do you mean?

00163-12 | Q. Influence them possibly to smoke, be
00163-13 | appealing to them, make them think that this guy
00163-14 | is cool and, therefore, perhaps either then or
00163-15 | sometime in the future they think smoking is
00163-16 | cool. Have some influence.

00163-17 | MR. KACZYNSKI: He hadn't asked you a

00163-18 | question.
00163-19 | BY MR. KRISTAL:
00163-20 | Q. I'm getting to the question. You
00163-21 | just interrupted my question because of -- I
00163-22 | forget where I was going.
00163-23 | Did Reynolds specifically not go to
00163-24 | professionals because they were concerned about
00163-25 | how it would look in the future? At the time you

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00164-01 | were doing it, was there a conscious decision not
00164-02 | to go to professionals because it might be
00164-03 | misinterpreted?

00164-04 | A. There was a conscious decision not to
00164-05 | do research among those underage, because we only
00164-06 | market to adults, and I think that includes
00164-07 | getting opinions.

00164-08 | Q. But you were getting opinions from 18
00164-09 | to 24-year-olds on that subject.

00164-10 | A. Adult competitive smokers.

00164-11 | Q. You are missing my point. The people
00164-12 | from whom you were getting the opinions about
00164-13 | whether the Joe Camel ad would appeal to younger
00164-14 | people, were lay 18 to 24-year-olds.

00164-15 | Weren't you -- in other words, when
00164-16 | the focus group said you can't use that punk rock
00164-17 | thing, it is going to appeal to younger kids, you
00164-18 | didn't use it, so you were getting the advice.

00164-19 | Here is my question: Weren't you
00164-20 | getting advice, it is just that you were getting
00164-21 | it from 18 to 24-year-old nonprofessionals?

00164-22 | MR. KACZYNSKI: Objection. I assume the
00164-23 | last question is the one you want answered there.

00164-24 | MR. KRISTAL: Yes.

00164-25 | THE WITNESS: We got input from people. We

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00165-01 | market our cigarettes to adult competitive
00165-02 | smokers, and those are people we have a policy of
00165-03 | doing research among.

00165-04 | Jim Johnston made it very clear, our
00165-05 | chairman at the time, and wrote a letter in this
00165-06 | regard, if anybody came forward with evidence
00165-07 | that this campaign influenced childrens'
00165-08 | decisions to start smoking, then we would pull
00165-09 | the campaign, and it is on record, and there has
00165-10 | not been evidence of that.

00165-11 | MR. KRISTAL: Again, I move to strike the
00165-12 | nonresponsive portion of the question.

00165-13 | BY MR. KRISTAL:

00165-14 | Q. I really wasn't asking you about what
00165-15 | you believe the effect was or wasn't. I was just
00165-16 | asking you about who you were asking questions of
00165-17 | regarding the appealability to younger kids. Do
00165-18 | you follow what I am saying?

00165-19 | A. Yes.

00165-20 | Q. The people that you asked those
00165-21 | questions to were the focus group people,
00165-22 | correct?

00165-23 | A. Yes.

00165-24 | Q. Let me mark as Exhibit 7 a December
00165-25 | 4, 1987 memo.

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00166-01 | (Deposition Exhibit 7 was marked.
00166-02 | for identification and annexed hereto.)

00166-03| MR. KRISTAL:
00166-04| Q. And it is from -- I think that's Fran
00166-05| Creighton, although the F is a little hard to
00166-06| read, and P-E-N-N-I-C-K, to -- is that Facklman
00166-07| again, B.J. Facklman?
00166-08| A. Yes. I believe so.
00166-09| Q. This is December 4th, 1987, which is
00166-10| when you were senior brand manager for Camel.
00166-11| A. Yes.
00166-12| Q. The title of this is, Results From
00166-13| Camel 75th Birthday Advertising Communication
00166-14| Test. Now the very first component of the Joe
00166-15| Camel campaign was this 75th birthday advertising
00166-16| campaign; was it not?
00166-17| A. I'm sorry, could you --
00166-18| Q. That is the launch -- I'm sorry, the
00166-19| launch of Joe Camel campaign was the 75th
00166-20| birthday campaign?
00166-21| A. Yes. I believe so. It began with
00166-22| the launch of the 75th birthday campaign.
00166-23| Q. It was the 75th birthday of Camel
00166-24| cigarettes, having started in 1913?
00166-25| A. That's correct.

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00167-01| Q. And it was now going to be for 1988?
00167-02| A. Right.
00167-03| Q. Which if my math is correct, is 75
00167-04| years.
00167-05| A. That's right.
00167-06| Q. And this was some sort of test that
00167-07| was run on the 75th birthday advertising. Is
00167-08| that what is reflected here? At least the
00167-09| document is talking about.
00167-10| A. Yes.
00167-11| Q. The communications test, is that a
00167-12| term of art? Is that a focus group test? Is
00167-13| that a survey? What kind of test is that
00167-14| reflecting here?
00167-15| A. I don't know the exact methodology.
00167-16| I don't remember what was used here, but I
00167-17| suspect it was a quantitative test as opposed to
00167-18| focus group test.
00167-19| Q. Because it says in the second
00167-20| sentence -- well, let me read that first
00167-21| paragraph. "The following highlights key
00167-22| findings and conclusions from communications
00167-23| testing of Camel's 75th birthday advertising
00167-24| among male target smokers aged 18 to
00167-25| 34-years-old. The test methodology used to

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00168-01| assess this advertising was very similar to
00168-02| previous communications testing for Camel, such
00168-03| that results can be compared to 1986 test results
00168-04| for the posters campaign as a benchmark."
00168-05| Now, I think I heard you say it was a
00168-06| quantitative test, which is a survey.
00168-07| A. Yes.
00168-08| Q. Do you know if the actual survey
00168-09| results are somewhere? Are they maintained
00168-10| anywhere as opposed to a memo about the results?
00168-11| Do you follow what I am saying?
00168-12| A. I follow what you are saying, and I
00168-13| don't know the answer, because a supplier would

00168-14| have conducted the research for us and I don't
00168-15| know.
00168-16| Q. The memo continues under a section
00168-17| called users and product image communication. and
00168-18| The first bullet reads: "Camel's 75th birthday
00168-19| advertising communicated user imagery which is
00168-20| highly consistent with Camel's current copy
00168-21| strategy. In fact, the 75th birthday campaign
00168-22| achieved a Camel user profile which combines the
00168-23| desired characteristics of
00168-24| independence/individualism, with relatability and
00168-25| acceptance by the peer group." Did I read that

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00169-01| correctly?
00169-02| A. Yes.
00169-03| Q. Were those the Camel user profile
00169-04| desired characteristics,
00169-05| independent/individualism and acceptance by the
00169-06| peer group?
00169-07| A. Those were some of them.
00169-08| Q. And if I'm reading the next paragraph
00169-09| there, basically target smokers were surveyed and
00169-10| rated the theme on varying different categories.
00169-11| Is that what happened?
00169-12| A. It looks like it, yes.
00169-13| Q. And the two categories, one is
00169-14| individualism and the other is peer group
00169-15| acceptance.
00169-16| A. Well, I think what that is is, the
00169-17| person writing this memo, categorized these
00169-18| questions as all about that subject. What the
00169-19| people were actually asked, I think, is based on
00169-20| this advertising, is the Camel smoker
00169-21| independent.
00169-22| Q. I see. So they were asked specific
00169-23| questions, and the writer of this memo then took
00169-24| the answers and broke them out into categories.
00169-25| One category represented individualism and one

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00170-01| category represented peer group acceptance.
00170-02| A. That's what it looks like to me.
00170-03| Q. Right. I see that now. Okay. This
00170-04| digress from the Mizerski article was triggered
00170-05| by a statement a while ago about peer group
00170-06| influence on smoking. Do you generally remember
00170-07| that? It's been awhile.
00170-08| A. Mizerski?
00170-09| Q. Right.
00170-10| MR. KACZYNSKI: Two.
00170-11| BY MR. KRISTAL:
00170-12| Q. Exhibit 2.
00170-13| A. Here we go.
00170-14| Q. On the first page, right-hand column,
00170-15| we went through a very long digression.
00170-16| MR. KACZYNSKI: Do you want to swap that
00170-17| copy back for your highlighted one.
00170-18| MR. KRISTAL: Yes. Sure.
00170-19| MR. KACZYNSKI: Sorry about that.
00170-20| MR. KRISTAL: No. I'm glad to help.
00170-21| BY MR. KRISTAL:
00170-22| Q. We had read the sentence: "He,"
00170-23| referring to McNeal, "he and others argue that
00170-24| the purchase may not be immediate because the

|00170-25| child may develop and store in his" --

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|00171-01| A. Excuse me. I'm sorry. Where are
|00171-02| you? I'm not following you.
|00171-03| Q. That's okay.
|00171-04| A. Okay.
|00171-05| Q. Let me just read it. "He and others
|00171-06| argue that the purchase may not be immediate
|00171-07| because the child may develop and store in his or
|00171-08| her memory many of the orientations and norms
|00171-09| reflected in advertising until a purchase
|00171-10| opportunity occurs." Then we went on our
|00171-11| digression.
|00171-12| Let me read the next sentence:
|00171-13| "Apparently these effects can result from
|00171-14| advertising aimed at adults even if youths are
|00171-15| not specifically targeted."
|00171-16| Do you agree that -- let me change
|00171-17| the exact wording of that. Do you agree that
|00171-18| advertising can have effects on youths, even
|00171-19| though they are not specifically targeted with
|00171-20| the advertising campaign?
|00171-21| A. What do you mean by effects?
|00171-22| Q. Effected in any way, similar to
|00171-23| perhaps the target group.
|00171-24| MR. KACZYNSKI: Objection, vague.
|00171-25| THE WITNESS: The effect that we looked for

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|00172-01| with the target group is that someone switched
|00172-02| from using Marlboro to -- switched to Camel.
|00172-03| BY MR. KRISTAL:
|00172-04| Q. Okay. How about the brand image
|00172-05| effect?
|00172-06| A. Well, the purpose of the advertising
|00172-07| is to --
|00172-08| Q. No. I understand the purpose is to
|00172-09| get someone to switch from --
|00172-10| MR. KACZYNSKI: She didn't finish.
|00172-11| MR. KRISTAL: But it's not the question I'm
|00172-12| asking.
|00172-13| MR. KACZYNSKI: Well, it is the answer you
|00172-14| are getting.
|00172-15| MR. KRISTAL: I realize that.
|00172-16| BY MR. KRISTAL:
|00172-17| Q. Let me withdrawal that last question.
|00172-18| Let me ask you this: Do you believe that a brand
|00172-19| image can be conveyed to youths who are not the
|00172-20| target of the advertising campaign?
|00172-21| A. Do you -- I'm not sure what you mean.
|00172-22| Conveyed? Do you mean do they see it?
|00172-23| Q. And do they relate to it in the way
|00172-24| that the target group is relating to the brand
|00172-25| image.

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|00173-01| A. Well, I -- again, the way the target
|00173-02| group relates to the image, and that's all I can
|00173-03| speak to is, they look at the image, their
|00173-04| information about the product, the pack, the
|00173-05| product itself, and they decide do I want to stay
|00173-06| with Camel as a brand or do I want to switch from
|00173-07| Marlboro to Camel.
|00173-08| Q. I see what you are saying. Let me
|00173-09| make it a little more generic. One of brand

00173-10 | image objectives that we saw in one of those
00173-11 | memos for Camel was to enhance the image of the
00173-12 | smoker so that by smoking Camel he would gain
00173-13 | acceptance amongst his peer group. Do you recall
00173-14 | that?

00173-15 | A. No. Could you just repeat the
00173-16 | question again.

00173-17 | Q. Sure. I'm laying the groundwork for
00173-18 | my next question. We had seen in one of the
00173-19 | memos that one of the objectives of the campaign
00173-20 | was to have the smoker enhance his brand image,
00173-21 | gain acceptance amongst his peers.

00173-22 | A. That -- you are talking about the
00173-23 | campaign work before Joe Camel. You are not
00173-24 | talking about the Joe Camel campaign?

00173-25 | Q. I'm talking about the memo that

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00174-01 | discussed the Camel campaign in terms of changing
00174-02 | its image, which was prior to the Joe Camel
00174-03 | campaign.

00174-04 | A. Right.

00174-05 | Q. Do you believe that a cigarette
00174-06 | advertising campaign targeted for 18 to
00174-07 | 24-year-old smokers, can have an effect on the
00174-08 | image of younger children, younger teenagers,
00174-09 | i.e., a 15, 16-year-old, would get the message
00174-10 | that by smoking that product, he would gain more
00174-11 | acceptance in his peer group, as an example?

00174-12 | MR. KACZYNSKI: Object to the form.

00174-13 | THE WITNESS: No, no.

00174-14 | BY MR. KRISTAL:

00174-15 | Q. Do you think that never occurs or do
00174-16 | you not have an opinion?

00174-17 | A. Well, what I think is that how the
00174-18 | advertising operates is, it does not effect the
00174-19 | decision whether to start smoking or not, so I
00174-20 | don't think it has that effect.

00174-21 | If your question is does it have an
00174-22 | effect on brand choice, which is the intended
00174-23 | objective among adult smokers, that is to
00174-24 | convince them to either stay with their brand
00174-25 | choice if they smoke Camel or switch from their

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00175-01 | brand choice if they don't, so does it effect
00175-02 | brand choice? I don't know the answer to that
00175-03 | and I have not seen clear research that answers
00175-04 | that. And we don't do the research on those
00175-05 | under 18 to see if it effects brand choice. Not
00175-06 | the decision to start smoking or not, but brand
00175-07 | choice.

00175-08 | Q. Have you done any research to see if
00175-09 | it effected the decision to start smoking?

00175-10 | A. Again, we --

00175-11 | Q. Or would you refer to the articles
00175-12 | you've already mentioned; Henke, Mizerski, the
00175-13 | Roper survey? Are those the things --

00175-14 | A. Right. And there are many other
00175-15 | studies as well that obviously --

00175-16 | Q. What are you relying on other than
00175-17 | what you've already said here today?

00175-18 | A. Well, there have been -- in terms of
00175-19 | the advertising does not effect the decision to
00175-20 | start smoking?

00175-21| Q. Right.
00175-22| A. I think there are reported reasons.
00175-23| When you ask people why did you start smoking and
00175-24| there are Gallop polls on that which shows that
00175-25| advertising is insignificant to nonexistent.

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00176-01| Q. Let me stop you there. Which Gallop
00176-02| polls are you referring to?
00176-03| A. One in 1991, one in 1993.
00176-04| Q. Okay.
00176-05| A. On the reported reasons why people
00176-06| smoked, there is ad ban research, the Department
00176-07| of Health Education and Welfare did a study which
00176-08| came substantially to the conclusion that, you
00176-09| know, you put advertising bans in place and it
00176-10| does not effect tobacco consumption trend.
00176-11| Stewart did a study of about, I
00176-12| think, it was roughly 22 countries across 27
00176-13| years and came to the conclusion that advertising
00176-14| bans did not change the consumption trends. Aero
00176-15| did a study. I know that the Canadian Supreme
00176-16| Court in 1995, after exhaustive review of all the
00176-17| literature on advertising bans, came to a similar
00176-18| conclusion, there is no scientific link between
00176-19| advertising bans and reduced tobacco consumption.
00176-20| There are also studies on the
00176-21| predictors of onset of smoking, what predicts the
00176-22| onset of smoking. The 1994 Surgeon General
00176-23| report has a summary of 27 studies that were
00176-24| done, clearly points out advertising not being
00176-25| one of them.

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00177-01| Q. In terms of the reliance materials, I
00177-02| saw that listed as one of the things you are
00177-03| relying on the table from the Surgeon General's
00177-04| report.
00177-05| A. Yes.
00177-06| Q. The thing that was listed was the
00177-07| table. Have you read the Surgeon General's
00177-08| report?
00177-09| A. I have only read sections of the
00177-10| Surgeon General report. I have not read the
00177-11| entire report.
00177-12| Q. What sections of that 1994 Surgeon
00177-13| General's report have you read?
00177-14| A. I would have to have it in front of
00177-15| me to refresh my recollection. But can I finish
00177-16| my answer to the question you asked first?
00177-17| Q. I was going to get back to anything
00177-18| else, but go ahead.
00177-19| A. So there are reported reasons. There
00177-20| is advertising ban research. There has been many
00177-21| studies done on the predictors of the onset of
00177-22| smoking. Okay.
00177-23| There are econometric analysis that
00177-24| have been done, the Biels research, on what
00177-25| explains observed smoking behavior. And clearly,

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00178-01| there is the Federal Trade Commission
00178-02| investigation that went on for literally years,
00178-03| where in 1994, after looking at internal company
00178-04| documents, external company documents, government
00178-05| data, came to the conclusion that there is no

00178-06| evidence that the Joe Camel campaign causes
00178-07| children to start smoking or smoke more. There
00178-08| is just an overwhelming amount of evidence that
00178-09| says advertising is not effecting the decision to
00178-10| start smoking.

00178-11| Q. Are you relying on -- you mentioned
00178-12| two litigation related things, the Canadian
00178-13| Supreme Court opinion and the FTC opinion. Are
00178-14| you relying on those things for your opinion?

00178-15| A. The FTC opinion, definitely. I mean,
00178-16| I'm aware of the Canadian Supreme Court decision,
00178-17| and I certainly believe that's relevant as well.

00178-18| Q. Have you read the Canadian Supreme
00178-19| Court decision?

00178-20| A. I've read their summary of their
00178-21| decision.

00178-22| Q. Where did you read that?

00178-23| A. You mean, where was I or --

00178-24| Q. Not really. In the living room by
00178-25| the fireplace.

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00179-01| A. I don't understand.

00179-02| Q. Where did you get a summary of a
00179-03| Canadian Supreme Court decision from?

00179-04| A. When the Canadian Supreme Court
00179-05| reached the decision, obviously that was a topic
00179-06| of conversation at the company. And, I believe,
00179-07| the external relations department -- I asked them
00179-08| for it and they gave it to me.

00179-09| Q. Have you ever read the full Canadian
00179-10| Supreme Court opinion on that subject?

00179-11| A. I read sections of it. I don't
00179-12| recall reading the full document. I don't
00179-13| believe.

00179-14| Q. What portion of the surgeon
00179-15| general -- strike that.

00179-16| Did you read the portion of the
00179-17| surgeon general's report that related to the
00179-18| table that has been designated as something you
00179-19| are relying on?

00179-20| A. Yes.

00179-21| Q. Why aren't you relying on the full
00179-22| section as opposed to just the table?

00179-23| A. Well, I think what is relevant here
00179-24| is the 27 studies which the Surgeon General
00179-25| didn't do, but are summarized in the Surgeon

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00180-01| General report.

00180-02| Q. So are you relying on the text of the
00180-03| surgeon general's report or on the table that is
00180-04| in your list of reliance materials?

00180-05| A. The table.

00180-06| Q. Are you aware of any -- do you know
00180-07| what a longitudinal study is?

00180-08| A. I believe it is a study over time.

00180-09| Q. Right. Are you aware of any
00180-10| longitudinal study which has looked at the
00180-11| influence of cigarette advertising campaigns --
00180-12| over any campaign over time in terms of the
00180-13| decision of someone to smoke? In other words, if
00180-14| a study had been done in 1988 on three, four and
00180-15| 5-year-olds and their knowledge of Joe Camel and
00180-16| their recognition of Joe Camel and then followed

00180-17| them to today when they would now be 13, 14, 15,
00180-18| 16 to see whether or not there is a correlation
00180-19| between those who have started smoking and their
00180-20| recognition ten years ago or anything related to
00180-21| that?
00180-22| MR. KACZYNSKI: Object to the form.
00180-23| BY MR. KRISTAL:
00180-24| Q. Do you follow what I am saying? In
00180-25| terms of a longitudinal study, have you ever seen

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00181-01| anything like that anywhere on the issue of
00181-02| advertising and smoking?
00181-03| A. I would say that I would not describe
00181-04| it as a pure longitudinal study, but I would say
00181-05| that Pierce has attempted to do work in that
00181-06| regard.
00181-07| Q. Who is that?
00181-08| A. Pierce.
00181-09| Q. And what paper is that?
00181-10| A. Where is it published you mean?
00181-11| Q. Or what is the title? If I wanted to
00181-12| find it, where would I go to?
00181-13| A. I can't recall. I've read the
00181-14| studies. I can't recall. There is more than
00181-15| one. The title or where it was published I --
00181-16| Q. Let me give you a most recent list of
00181-17| reliance materials and see if you could just skim
00181-18| through it and tell me if that study is on there
00181-19| so I can understand what you are referring to.
00181-20| A. I don't believe it is. I'm not
00181-21| relying on that for my opinion.
00181-22| Q. Okay.
00181-23| A. You asked me a specific question.
00181-24| Q. I did ask you a specific question and
00181-25| your answer to me -- I thought that meant you

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00182-01| were relying on it and --
00182-02| A. No.
00182-03| Q. Let me mark it anyway, since I have
00182-04| the stamp out.
00182-05| (Deposition Exhibit 8 was marked.
00182-06| for identification and is annexed hereto.)
00182-07| BY MR. KRISTAL:
00182-08| Q. Exhibit 8 is the amended Exhibit B to
00182-09| your expert report and exhibit -- let me mark it
00182-10| as Exhibit 9, the first Exhibit B that was
00182-11| attached to your expert report. Let me mark as
00182-12| Exhibit 10 the -- what is called your expert
00182-13| disclosure. If we could just start with ten for
00182-14| a minute. Who wrote Exhibit 10?
00182-15| (Deposition Exhibits 9 and 10 were
00182-16| marked for identification and are
00182-17| annexed hereto.)
00182-18| THE WITNESS: I had several meetings with
00182-19| internal and external lawyers, and lawyers put
00182-20| together a first draft for me and then of which I
00182-21| made changes to and we worked together on a final
00182-22| draft and that was how it was done.
00182-23| BY MR. KRISTAL:
00182-24| Q. You have never been designated as an
00182-25| expert in any other litigation you've given

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00183-01| testimony in, have you?

00183-02| A. Not that I've given testimony in. I
00183-03| was scheduled to testify in a trial, I believe,
00183-04| where I was named an expert, and we were
00183-05| preparing for the trial and I had an expert
00183-06| statement in that, but I didn't actually give a
00183-07| deposition and it didn't go to trial, so I didn't
00183-08| actually testify in the trial, but I believe
00183-09| there is an expert statement.

00183-10| Q. Which case was that? One of the
00183-11| Attorney General cases?

00183-12| A. No.

00183-13| Q. How long ago was that?

00183-14| A. I'm thinking it was last year or the
00183-15| year before.

00183-16| Q. Was it an individual smoker's claim?

00183-17| A. It was. It was an individual smoker
00183-18| case.

00183-19| Q. Were you deposed in that case?

00183-20| A. No.

00183-21| Q. Has any court ever accepted your
00183-22| qualifications as an expert?

00183-23| A. The only time I've testified in one
00183-24| of our cases is in Minnesota, and it was as a
00183-25| fact witness. That was the only time I testified

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00184-01| at trial.

00184-02| Q. What is your understanding as to why
00184-03| you're now being designated as an expert as
00184-04| opposed to a fact witness?

00184-05| MR. KACZYNSKI: Objection.

00184-06| THE WITNESS: Well, as I understand it,
00184-07| being designated as an expert, I am allowed more
00184-08| freedom in terms of expressing an opinion and
00184-09| having evidence that supports my opinion.

00184-10| MR. KRISTAL:

00184-11| Q. And that's because -- well, tell me
00184-12| is it your understanding that because at trial in
00184-13| Minnesota the judge would not allow you to
00184-14| express certain opinions while you were on the
00184-15| stand because you had not been designated as an
00184-16| expert?

00184-17| MR. KACZYNSKI: Objection. Go ahead.

00184-18| THE WITNESS: No. That's not my
00184-19| understanding. Like I said, in an individual
00184-20| case I was an expert before and then sometimes it
00184-21| is a fact, and I think it just depends on the
00184-22| lawyer's approach. I mean, I don't -- I -- in
00184-23| this particular case, we talked about they would
00184-24| like me to be an expert witness, and I agreed
00184-25| with that.

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00185-01| MR. KRISTAL:

00185-02| Q. When you said a minute ago in the
00185-03| individual case you had been an expert before,
00185-04| you mean the lawyers had designated you as an
00185-05| expert? Maybe I'm splitting hairs here. You had
00185-06| not been qualified as expert by the court?

00185-07| A. Right. It didn't go to trial.

00185-08| Q. When were you first designated as an
00185-09| expert by the defendants in that case? In other
00185-10| words, if we look on that expert disclosure
00185-11| report, what is the date?

00185-12| A. You know, I just can't remember. It

00185-13 | could have been last year or the year before.
00185-14 | Q. What was the subject of your
00185-15 | expertise in that case?
00185-16 | A. Similar to this case.
00185-17 | Q. Did you write an expert disclosure in
00185-18 | that case?
00185-19 | A. Again, we worked on it the same way
00185-20 | as we did in this case.
00185-21 | Q. Who did you work on this disclosure
00185-22 | with specifically?
00185-23 | A. There would have been -- you know,
00185-24 | obviously it wasn't just for this case, but I've
00185-25 | had a number of meetings with lawyers over what I

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00186-01 | believe I can testify on and so that's part of
00186-02 | it. And then there were internal lawyers. And
00186-03 | I'm just trying to remember. I think in this
00186-04 | case, it was Sharon Yolley or Mark Holton, or
00186-05 | perhaps both.
00186-06 | Q. You are asking internal lawyers I
00186-07 | worked with, right?
00186-08 | Q. Any lawyers.
00186-09 | A. Well, those were the internal
00186-10 | lawyers.
00186-11 | Q. Were there external lawyers you
00186-12 | worked with?
00186-13 | A. Well, again, we have conversations.
00186-14 | And specific to preparing this document, though,
00186-15 | I worked with the internal lawyers.
00186-16 | Q. In terms of on Page 3, for example,
00186-17 | with respect to clearance to statutory and
00186-18 | regulatory requirements -- do you see that?
00186-19 | A. Yes, I do.
00186-20 | Q. Is that prior to your coming to RJR
00186-21 | or subsequent to?
00186-22 | A. Well, this is -- it could be either.
00186-23 | Q. Okay. And what would you be basing
00186-24 | and opinion upon whether or not Reynolds adhered
00186-25 | to the statutory and regulatory requirements for

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00187-01 | a period of time when you were not there?
00187-02 | A. Well, again, it would just be if
00187-03 | there were documents or something that reflected
00187-04 | it. I mean, it is primarily for the time I've
00187-05 | been there, but if there were documents I was
00187-06 | questioned on did we comply with the policy or
00187-07 | requirement.
00187-08 | Q. Well, how would you know if you
00187-09 | complied with -- RJR complied with the policy or
00187-10 | not?
00187-11 | A. Again, if there were old documents.
00187-12 | If there were old documents providing it one way
00187-13 | or the other.
00187-14 | Q. So if there are old documents that
00187-15 | you have been shown that reflect some adherence
00187-16 | to a policy, you would then be testifying that
00187-17 | RJR adhered to the policy --
00187-18 | A. I could speak to --
00187-19 | Q. -- based on that document?
00187-20 | A. Based on that document. A specific
00187-21 | issue about that document. I could say that
00187-22 | based on this document I believe that was what
00187-23 | was done.

00187-24| Q. Well, could you say anything more
00187-25| than this document says we adhered to a certain
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00188-01| policy as opposed to we did adhere to a policy,
00188-02| if you weren't around at the time?
00188-03| A. No.
00188-04| Q. Okay. How far back are you talking
00188-05| in terms of documents?
00188-06| A. I mean, it is primarily when an issue
00188-07| comes up and someone brings up an issue on an old
00188-08| document. It is not something I'm bringing up.
00188-09| It is when one of you guys brings it up.
00188-10| Q. "You guys" being both sides of the
00188-11| table or are you just looking at me?
00188-12| A. I was looking at you.
00188-13| MR. KACZYNSKI: We'll stipulate she was
00188-14| looking at you.
00188-15| BY MR. KRISTAL:
00188-16| Q. In the next to the last paragraph on
00188-17| Page 3, there are three things that you are going
00188-18| to base your opinions on. With respect to the
00188-19| third one, your review of information, testimony
00188-20| and documents concerning this case. Documents, I
00188-21| assume you are talking about things you may be
00188-22| shown. Is that fair to say?
00188-23| A. Yes.
00188-24| Q. Are all of the documents, as you sit
00188-25| here today upon which you're relying, included in
----- PAGE00189 -----

00189-01| Exhibit 8, the amended list?
00189-02| A. That's this -- eight is this one?
00189-03| This one?
00189-04| Q. Yes. That's the amended one, the
00189-05| more recent one.
00189-06| A. I'm sorry, you are asking?
00189-07| Q. I want to know if there are any other
00189-08| documents that fall in that category three in
00189-09| your expert disclosure that you would be relying
00189-10| on for any opinions that are not on Exhibit 8.
00189-11| A. The only thing I can think of is
00189-12| around specific issues. Like we talked about
00189-13| earlier underage share, and if you had a -- if
00189-14| you wanted to know information about underage
00189-15| share, I would rely on government data, which is
00189-16| publicly available, which isn't listed here, Tab
00189-17| 1 and Tab 2, for example, but it is government
00189-18| data. If that issue came up and you asked me
00189-19| about it.
00189-20| Q. Okay. Other than me asking you about
00189-21| it, with respect to what you anticipate
00189-22| testifying to by the lawyers who are calling you
00189-23| to the witness stand to testify, is there
00189-24| anything that you would be relying on that is not
00189-25| on Exhibit 8?
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00190-01| Q. We already mentioned that box
00190-02| earlier. Putting that aside, because that's
00190-03| public literature and that would fall under
00190-04| number two anyway. I'm talking about category
00190-05| three.
00190-06| A. Okay. Let me just --
00190-07| Q. Is there anything that the lawyers
00190-08| who are calling you to the witness stand to

00190-09 | testify will be asking you about that you will be
00190-10 | relying on that's not on Exhibit 8? The only
00190-11 | reason I'm asking is because I want to know what
00190-12 | you are relying on before you hit the stand.

00190-13 | A. Right. I understand. I mean, I
00190-14 | can't think of anything else. We tried to put it
00190-15 | here.

00190-16 | Q. There is -- part of three is your
00190-17 | review of testimony. Have you reviewed any
00190-18 | testimony that you are going to be relying on for
00190-19 | any opinions?

00190-20 | A. Well, at this point not, but in some
00190-21 | cases I review depositions maybe given by the
00190-22 | marketing experts for the other side. I have
00190-23 | done that before.

00190-24 | Q. So if I understand you, other than
00190-25 | plaintiff's expert's depositions in this case,

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00191-01 | which as of today don't exist, you are not
00191-02 | relying on any testimony in terms of your direct
00191-03 | testimony; is that correct? Because I didn't see
00191-04 | any testimony on the --

00191-05 | A. Right. That's correct.

00191-06 | Q. And then you have your review of that
00191-07 | kind of broad category, information. What does
00191-08 | that mean? Other than a lawyer trying to throw
00191-09 | in the kitchen sink there. It says your review
00191-10 | of information, testimony and documents. We've
00191-11 | done documents and testimony. What does
00191-12 | information mean?

00191-13 | A. I suppose if there was some
00191-14 | information that wasn't classified as, you know,
00191-15 | testimony or document.

00191-16 | Q. And I would like to know if there is
00191-17 | some such information that falls in that category
00191-18 | that's not on Exhibit B or Exhibit 8.

00191-19 | A. That would not be a document?

00191-20 | Q. Is there anything that's embraced in
00191-21 | that category -- information that isn't on
00191-22 | Exhibit 8?

00191-23 | A. Well, again, you know as I've talked
00191-24 | about, there is like this government data that
00191-25 | you know we've talked about.

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00192-01 | Q. You see what I'm -- if I bring up
00192-02 | something as part of my cross-examination at
00192-03 | trial that was not part of your opinions on
00192-04 | direct, you obviously can't anticipate what you
00192-05 | would be relying on to respond to me.

00192-06 | A. Okay.

00192-07 | Q. But I'm entitled to know at this
00192-08 | juncture for the entire scope of your direct
00192-09 | testimony with respect to any and all opinions
00192-10 | you intend as an expert to give, what you are
00192-11 | relying on.

00192-12 | A. I understand.

00192-13 | Q. So what I'm -- the only thing I'm
00192-14 | doing now is to try to make a record so I can go
00192-15 | and read this later to make sure that I have
00192-16 | everything you are relying on.

00192-17 | A. Again, we put down here those things
00192-18 | that I'm relying on that we could think of today.

00192-19 | Q. Okay. And I know your counsel, if

00192-20 | you think of something tomorrow or later on, is
00192-21 | going to update that, I would assume.
00192-22 | MR. KACZYNSKI: I would assume.
00192-23 | BY MR. KRISTAL:
00192-24 | Q. All right. Why the difference
00192-25 | between Exhibits 8 and 9? One was forwarded to

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00193-01 | us with your expert disclosure, which was Exhibit
00193-02 | 9, which is more extensive than Exhibit 8. Why
00193-03 | is that? Has somebody said we're not going to go
00193-04 | through all of these areas and, therefore, we
00193-05 | don't need to have you rely on these? Do you
00193-06 | follow what I am saying?
00193-07 | A. I do follow what you are saying.
00193-08 | Q. There is a whole question on the WE
00193-09 | card program. All of that's completely out.
00193-10 | A. Right.
00193-11 | Q. I'm asking, why is that?
00193-12 | A. There was a preliminary list put
00193-13 | together which was more comprehensive, and in
00193-14 | reviewing it later, we felt like it did not need
00193-15 | to be that comprehensive, so we did a more
00193-16 | condensed list.
00193-17 | Q. Okay.
00193-18 | MR. KACZYNSKI: Which is another way of
00193-19 | saying the lawyer screwed up.
00193-20 | MR. KRISTAL: Well, it was done very
00193-21 | artfully, anyway.
00193-22 | MR. KACZYNSKI: No, to --
00193-23 | MR. KRISTAL: The answer, not to screw up.
00193-24 | MR. KACZYNSKI: Yeah. But to cut to the
00193-25 | chase, that's what happened.

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00194-01 | MR. KRISTAL:
00194-02 | Q. Maybe I'm mistaken, but wasn't there
00194-03 | a portion of your Minnesota testimony dealing
00194-04 | with the WE card program, the verification of
00194-05 | minors not purchasing cigarettes that you were
00194-06 | asked about?
00194-07 | We, W-E, two words, card, like ID
00194-08 | card.
00194-09 | A. It is possible. I don't remember.
00194-10 | Q. As you sit here today, you are not
00194-11 | going to be expressing any opinions regarding the
00194-12 | WE card program or any verification of age
00194-13 | program relating to smoking?
00194-14 | A. I'm not trying to be difficult, but
00194-15 | if you ask me a question about what our company
00194-16 | is doing, then I intend to respond. If you are
00194-17 | talking about do I intend to put in my direct
00194-18 | testimony about that, no, I don't plan to.
00194-19 | Q. Okay. So on direct there is nothing
00194-20 | about verification that's going to be coming up?
00194-21 | A. I don't plan to testify on that
00194-22 | directly at this point in time.
00194-23 | Q. Let me ask you so I understand, is
00194-24 | this being parsed out over the issue of fact
00194-25 | versus expert witness?

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00195-01 | MR. KACZYNSKI: No. What happened --
00195-02 | MR. KRISTAL: Is that not going to be part
00195-03 | of the direct? Do you follow what I am saying?
00195-04 | I don't want to be sandbagged at trial.

00195-05 | MR. KACZYNSKI: What happened is, you are
00195-06 | going to find if you compare them, that that
00195-07 | portion of her reliance materials looks a whole
00195-08 | lot like Dave Iauco's, and it should of went in
00195-09 | Dave Iauco's, it shouldn't of went into her's, so
00195-10 | that's how we fixed it.

00195-11 | I can tell you she will not be asked any
00195-12 | questions on direct examination about right
00195-13 | decisions right now, which is the bulk of what
00195-14 | was removed, the TI WE card program.

00195-15 | However, just one thing I do want to clear
00195-16 | up. You asked about verifications in general.
00195-17 | The verification material contained within her
00195-18 | reliance material is company specific.

00195-19 | MR. KRISTAL: The promotion stuff?

00195-20 | MR. KACZYNSKI: Exactly. 21 and over,
00195-21 | exactly. That, we do intend to go into on
00195-22 | direct, and I think that kind of covers the
00195-23 | landscape.

00195-24 | MR. KRISTAL: It does. Thank you.

00195-25 | BY MR. KRISTAL:

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00196-01 | Q. In the Mizerski study, what he did
00196-02 | was, he had two groups of -- do you remember the
00196-03 | name Lotto when you were a kid? Is that not a
00196-04 | little picture card, right, he had?

00196-05 | A. Yes. He had a picture board.

00196-06 | Q. And on it there were cartoon
00196-07 | characters -- what does he call them?

00196-08 | A. Trade characters.

00196-09 | Q. Cartoon trade characters. Charlie
00196-10 | Tuna, Ronald McDonald, Tony the Tiger, and the
00196-11 | Marlboro man on a horse, it looks like with a
00196-12 | laureate. Then he had the logo for the Disney
00196-13 | Channel, Captain Crunch and Joe Camel, right?

00196-14 | A. Yes.

00196-15 | Q. And then he had six other picture
00196-16 | cards; one of a hamburger, one of a match that
00196-17 | looks like it was just struck. If I'm reading
00196-18 | that correctly, it looks like a flame there. Is
00196-19 | that what you are interpreting that as?

00196-20 | A. Yes.

00196-21 | Q. Then a cigarette in somebody's hand,
00196-22 | a bowl of breakfast cereal with a spoon next to
00196-23 | it, our good friend Mickey Mouse and then a blank
00196-24 | card, right?

00196-25 | A. Yes.

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00197-01 | Q. If I understand the methodology here,
00197-02 | he would ask the three, four, five and
00197-03 | 6-year-olds to match the cartoon trade characters
00197-04 | with the products. That is generally what he did
00197-05 | in that portion of the study?

00197-06 | A. Yes.

00197-07 | Q. And then there was a second portion
00197-08 | where, to elicit like or dislike opinions,
00197-09 | basically there was a smiling face and a frowning
00197-10 | face and he would ask the kids to pick which one
00197-11 | would apply to certain products, right?

00197-12 | A. Yes.

00197-13 | Q. Let's look at the results here. If
00197-14 | you look at the children's recognition of trade
00197-15 | characters on Page 68 internally of the journal,

00197-16 | it is the right-hand column heading.
00197-17 | A. I don't see where the page numbers
00197-18 | are.
00197-19 | MR. KACZYNSKI: Well, it is down here. What
00197-20 | is that there.
00197-21 | THE WITNESS: There, I see --
00197-22 | MR. KACZYNSKI: Pick it up and count after
00197-23 | that.
00197-24 | THE WITNESS: All right.
00197-25 | BY MR. KRISTAL:

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00198-01 | Q. Now, if you look at the second
00198-02 | paragraph, it gives some figures, numbers. I'll
00198-03 | tell you what. I think it is easier to go back
00198-04 | to the results section. It is more clearly laid
00198-05 | out there. And I do apologize.
00198-06 | A. What page would that be on or what
00198-07 | page are you talking about?
00198-08 | Q. Here.
00198-09 | A. That?
00198-10 | Q. The right-hand column. Paragraph
00198-11 | that starts across the total sample. He writes:
00198-12 | "Across the total sample, the Disney
00198-13 | Channel/Mickey Mouse match displayed the highest
00198-14 | level of recognition, 86 percent. This was
00198-15 | followed by the two cereal trade characters,
00198-16 | Captain Crunch, 72 percent; Tony the Tiger, 60
00198-17 | percent; Joe Camel with the cigarette, 52
00198-18 | percent." Do you see that?
00198-19 | A. Yes, I see that.
00198-20 | Q. So over the total sample of three to
00198-21 | 6-year-old children, 52 percent of them
00198-22 | recognized Joe Camel as being correlated with
00198-23 | cigarettes, right?
00198-24 | A. Yes.
00198-25 | Q. And then he writes -- if you skip the

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00199-01 | next sentence about Charlie Tuna: In fact, Joe
00199-02 | Camel was higher than Ronald McDonald and higher
00199-03 | than the Marlboro cowboy." Right?
00199-04 | A. I don't know if 52/51 is
00199-05 | significantly different -- I doubt it -- in the
00199-06 | study.
00199-07 | Q. That's right. I'm sure it isn't, but
00199-08 | it ranked higher by one percent?
00199-09 | A. The number is one higher, but I doubt
00199-10 | that is significant.
00199-11 | Q. Would you interpret this in terms of
00199-12 | recognition that three, four, five and 6-year-old
00199-13 | children equally equate Joe Camel with cigarettes
00199-14 | as do they equate Ronald McDonald with
00199-15 | hamburgers?
00199-16 | A. Yes.
00199-17 | Q. Now, if you counted, and you see
00199-18 | where he says that: "If the lit match was also
00199-19 | counted as a correct association with Joe Camel,
00199-20 | the total recognition rate of this trade
00199-21 | character would rise to 60.7 percent." Do you
00199-22 | see that?
00199-23 | A. Yes, I see that.
00199-24 | Q. So if that some of the children,
00199-25 | apparently, when they selected Joe Camel, they

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00200-01 | picked the match, the lit match, right?
00200-02 | A. Yes.
00200-03 | Q. So if you add the lit match with the
00200-04 | cigarette for Joe Camel, it moved it into third
00200-05 | place, just ahead of Tony the Tiger, right?
00200-06 | A. Yeah. Again, I doubt that is
00200-07 | significantly different. You know, 60 versus --
00200-08 | Q. I'm sure it is not significantly
00200-09 | different, but it is just ahead of Tony the
00200-10 | Tiger.
00200-11 | A. Numerically.
00200-12 | Q. Which of all of the cartoon trade
00200-13 | characters would never have been on television
00200-14 | for the lives of any of these three, four, five
00200-15 | and 6-year-olds?
00200-16 | A. I suspect that none. That they
00200-17 | all -- well, probably say Marlboro. Unlikely,
00200-18 | but probably the rest of them have been.
00200-19 | Q. Do you think Joe Camel's been on
00200-20 | television?
00200-21 | A. I know it has, because antismoking
00200-22 | groups and antireports on television featured Joe
00200-23 | Camel advertising.
00200-24 | Q. Do you think -- okay. Do you think
00200-25 | three, four, five and 6-year-olds are watching

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00201-01 | those shows?
00201-02 | A. I don't know if they are or not. I
00201-03 | mean, it is very possible they are in the home.
00201-04 | But it's been on television. They put it in
00201-05 | Weekly Reader.
00201-06 | Q. I'm talking about television.
00201-07 | A. I know you are. I'm just saying that
00201-08 | Weekly Reader, being a purely thing for kids,
00201-09 | they have used it as a character to say that
00201-10 | smoking is bad for you and it has been picked up
00201-11 | on television the same way, so....
00201-12 | Q. Well, smoking is bad for you, isn't
00201-13 | it?
00201-14 | A. I'm not saying that smoking doesn't
00201-15 | have increased risk. I'm saying antismoking
00201-16 | groups have used the Joe Camel character as a way
00201-17 | to talk to children about not smoking and smoking
00201-18 | being bad for you.
00201-19 | Q. Why do they use that character, do
00201-20 | you think?
00201-21 | MR. KACZYNSKI: Objection.
00201-22 | BY MR. KRISTAL:
00201-23 | Q. Do you have an opinion as to why the
00201-24 | Joe Camel character is used?
00201-25 | MR. KACZYNSKI: Objection.

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00202-01 | THE WITNESS: I don't know.
00202-02 | BY MR. KRISTAL:
00202-03 | Q. Now in this study, the specific
00202-04 | question -- let me see if I can find it, that was
00202-05 | being asked. Here it is, in discussion and
00202-06 | conclusions.
00202-07 | A. Are you on this page?
00202-08 | Q. Yeah. I think that's the page. The
00202-09 | first sentence: "This study was developed to
00202-10 | investigate the ability of young children to
00202-11 | match cartoon based trade characters to the

00202-12| product with which they were associated." Do you
00202-13| see that?
00202-14| A. Yes, I see that.
00202-15| Q. Would you agree that the Mizerski
00202-16| study shows that three, four, five and
00202-17| 6-year-olds are quite able to match Joe Camel
00202-18| with the product with which he is associated?
00202-19| A. I think it was just over half, 52
00202-20| percent.
00202-21| Q. Right. And then if you count the
00202-22| cigarette, it is just over 60 percent, right?
00202-23| A. Right. You asked me the product.
00202-24| The product is the cigarette, so that would just
00202-25| be over half.

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00203-01| Q. Was that conclusion surprising to
00203-02| you?
00203-03| A. Not necessarily. I mean, we didn't
00203-04| know, so I guess it is surprising in the sense I
00203-05| didn't know.
00203-06| But young children are very aware of
00203-07| advertising and, you know, that they recognize it
00203-08| because they are in the world and see things and
00203-09| are able to match it with a cigarette, half of
00203-10| them.
00203-11| I think the important question is,
00203-12| what's their attitude towards the product, not
00203-13| whether they see the advertising.
00203-14| Q. Do you think that these childrens'
00203-15| attitudes at age three, four, five and
00203-16| 6-year-olds predict whether they are going to
00203-17| smoke cigarettes or not?
00203-18| A. I don't know, but -- I don't know. I
00203-19| haven't done the research.
00203-20| Q. So the fact that in this study
00203-21| Mizerski showed that the three, four, five and
00203-22| 6-year-olds disapproved of smoking, doesn't say
00203-23| anything with respect to the longitudinal study
00203-24| that was talking about as to whether or not these
00203-25| three, four, five and 6-year-olds are going to

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00204-01| start smoking?
00204-02| MR. KACZYNSKI: Object to the form.
00204-03| THE WITNESS: I'm sorry.
00204-04| MR. KACZYNSKI: That's going -- go ahead.
00204-05| THE WITNESS: I guess I disagree with you,
00204-06| because it does say something. It says that
00204-07| recognition of this trade character Joe Camel
00204-08| does not make their attitudes towards smoking
00204-09| positive.
00204-10| BY MR. KRISTAL:
00204-11| Q. It doesn't make their attitudes
00204-12| towards cigarettes at three, four, five and
00204-13| 6-year-olds positive?
00204-14| A. That's correct.
00204-15| Q. Is it the Joe Camel that is not
00204-16| making them have a positive attitude?
00204-17| A. You know, the study doesn't include
00204-18| that and it doesn't know, so, you know, we can't
00204-19| conclude that. But I'm sure that's not all -- if
00204-20| it is playing a role, I'm sure that's not it.
00204-21| Q. The Roper study, let me mark that as
00204-22| Exhibit 11.

00204-23| (Deposition Exhibit 11 was marked.
00204-24| for identification and annexed hereto.)
00204-25| MR. KRISTAL: I will mark as Exhibit 12 a

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00205-01| letter from the Roper organization regrading the
00205-02| study.
00205-03| (Deposition Exhibit 12 was marked
00205-04| for identification and annexed hereto.)
00205-05| BY MR. KRISTAL:
00205-06| Q. Let me just start with 12. Exhibit
00205-07| 12 is dated August 11, 1993. It is on the Roper
00205-08| organization letterhead. It is from a Harry
00205-09| McNeil -- I'm sorry, Harry O'Neil, who is listed
00205-10| in the letterhead as vice chair of the Roper
00205-11| Organization, to Guy Blynn, B-L-Y-N-N, of the
00205-12| legal department at RJR. Do you see that?
00205-13| A. Yes.
00205-14| Q. Do you know Mr. Blynn?
00205-15| A. Yes, I do.
00205-16| Q. Is he an attorney?
00205-17| A. He's a lawyer.
00205-18| Q. Okay. Same thing.
00205-19| A. I guess, I think. Okay.
00205-20| Q. I think there is some kind of
00205-21| difference in England, but I'm not sure. We'll
00205-22| ask the Babco employees. That's a joke.
00205-23| In the first sentence, Mr. O'Neil
00205-24| references meetings with Mr. Blynn, Lyle Smith
00205-25| and Bill Lindquist. Who were Lyle Smith and Bill

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00206-01| Lindquist?
00206-02| A. They -- I think Lyle works in the
00206-03| legal department. And Bill Lindquist works in
00206-04| the -- worked, not now, he's not with the company
00206-05| now, but worked in the external relations
00206-06| department.
00206-07| Q. Okay. Do you know if they're
00206-08| attorneys?
00206-09| A. I don't believe either one of them
00206-10| are.
00206-11| Q. Now this letter references what
00206-12| became the Roper study, does it not?
00206-13| A. It sounds like it.
00206-14| Q. Did you see any drafts of the Roper
00206-15| study before it came out?
00206-16| A. No.
00206-17| Q. If you look at Page 3 of the letter
00206-18| under processing and reporting -- do you see
00206-19| that?
00206-20| A. Yes.
00206-21| Q. The second paragraph references
00206-22| providing results cross-tabulated by key
00206-23| demographics such as race, age, sex, region of
00206-24| county. Do you see that?
00206-25| A. What page are you on?

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00207-01| MR. KACZYNSKI: Three.
00207-02| BY MR. KRISTAL:
00207-03| Q. Page 3, the section under processing
00207-04| and reporting of the second paragraph.
00207-05| A. Okay. I'm there.
00207-06| Q. It talks about cross-tabulating
00207-07| results based on different demographics such as

00207-08| race, age, sex, region of country. Do you see
00207-09| that?
00207-10| A. Yes, I do.
00207-11| Q. Am I correct that the results were
00207-12| never cross-tabulated in the final Roper study by
00207-13| those demographics?
00207-14| A. I don't know.
00207-15| Q. Well, we'll take a look at it in a
00207-16| minute. The Roper study was of 10 to 17 year
00207-17| olds, correct?
00207-18| A. Yes.
00207-19| Q. Would it make a difference to you the
00207-20| answers that were given in the Roper study based
00207-21| by age group such as Mizerski did, broke his
00207-22| information out by three, four, five and
00207-23| 6-year-olds separately?
00207-24| A. I don't know if the sample size
00207-25| enabled them to do that. I don't know. It would

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00208-01| only make -- it would only be valuable to look at
00208-02| if the sample size was large enough to look at
00208-03| it.
00208-04| Q. Well, certainly going into the study
00208-05| you can design a sample size of whatever you
00208-06| want, right? In fact, they talk about the sample
00208-07| size in the very beginning of the letter.
00208-08| A. Yeah. I don't know. I wasn't
00208-09| involved in the design, so I don't know.
00208-10| Q. But my question is, do you believe it
00208-11| would have been better to have separate data on
00208-12| 10, 11, 12-year-olds as opposed to 15, 16 and
00208-13| 17-year-olds?
00208-14| A. I don't know.
00208-15| Q. If you look at the Roper study
00208-16| itself, which I think is 11 --
00208-17| MR. KACZYNSKI: 11.
00208-18| BY MR. KRISTAL:
00208-19| Q. This was, as it says on the cover,
00208-20| advertising character and slogan survey conducted
00208-21| for R. J. Reynolds Tobacco Company, November
00208-22| 1993. Do you see that?
00208-23| A. Yes, I see that.
00208-24| Q. Was this study ever published
00208-25| anywhere?

----- PAGE00209 -----

00209-01| A. I don't believe so.
00209-02| Q. Do you have any idea why the Mizerski
00209-03| study was published and this study was not?
00209-04| MR. KACZYNSKI: Objection, foundation.
00209-05| BY MR. KRISTAL:
00209-06| Q. That's what I am asking, if you have
00209-07| any idea. If you don't, there's no foundation.
00209-08| A. I don't know.
00209-09| Q. Do you know if the Roper survey was
00209-10| submitted anywhere for public publication?
00209-11| A. I don't know.
00209-12| Q. If you look at the page with II's,
00209-13| right in the beginning of the introduction
00209-14| methodology.
00209-15| A. Is this the first page that says
00209-16| background?
00209-17| Q. Um-hum. Does your's say introduction
00209-18| and methodology?

00209-19| A. Up top, yes.
00209-20| Q. Under objective of the research, do
00209-21| you see that?
00209-22| A. Yes, I see that.
00209-23| Q. It reads: "Essentially the objective
00209-24| of this research study was to obtain information
00209-25| from young people, age 10 to 17 years, regarding

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00210-01| one, the level of awareness of the Joe Camel
00210-02| trade character. Two, the image portrayed by Joe
00210-03| Camel and three, the sources of awareness of Joe
00210-04| Camel." Do you see that?
00210-05| A. I see that.
00210-06| Q. And then it specifically disclaims
00210-07| other objectives, does it not? The next
00210-08| sentence: "It should be noted, that the study
00210-09| made no attempt to measure the extent of underage
00210-10| smoking or to establish a linkage between trade
00210-11| character recognition and product usage." Is
00210-12| that correct?
00210-13| A. That's what it says.
00210-14| Q. So that there was no attempt made in
00210-15| the Roper study to see if there was a link
00210-16| between trade character recognition and whether
00210-17| or not 10 to 17-year-olds would use the product?
00210-18| A. That's what it says.
00210-19| Q. Now are you using this as a basis for
00210-20| a conclusion that advertising does not effect
00210-21| product usage --
00210-22| A. I didn't --
00210-23| Q. -- in 10 to 17-year-olds?
00210-24| A. I'm using it as a basis to say that
00210-25| recognition of the Joe Camel character does

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00211-01| not -- children do not form positive attitudes
00211-02| towards smoking because of recognition of the Joe
00211-03| Camel character.
00211-04| Q. Now, was there a slogan in the Joe
00211-05| Camel campaign?
00211-06| A. Yes.
00211-07| Q. What was the slogan?
00211-08| A. Smooth character.
00211-09| Q. When was that slogan -- was that
00211-10| always a slogan? I mean, I don't even remember
00211-11| seeing that. But where was that a slogan?
00211-12| A. Well, the -- when we launched the
00211-13| campaign with the 75th birthday, it was 75 years
00211-14| and still smoking, the brand. And then when we
00211-15| began the phase after the birthday, after we
00211-16| celebrated the birthday, it was smooth character.
00211-17| Q. For the rest of the Joe Camel
00211-18| campaign?
00211-19| A. For quite a few years.
00211-20| Q. Well, do you recall when the smooth
00211-21| character slogan was no longer used?
00211-22| A. Well, it was sort of selectively
00211-23| used. I don't know that it ever went away
00211-24| altogether. It just wasn't on every ad.
00211-25| Q. All right. Maybe then I

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00212-01| misunderstood you. In other words -- okay. The
00212-02| slogan smooth character didn't appear in all the
00212-03| Joe Camel ads?

00212-04| A. After the 75th birthday, I believe it
00212-05| was in all of them for a number of years and then
00212-06| was phased out until it was just in a few of
00212-07| them. That's my best recollection.

00212-08| Q. Did you glean from the Roper study,
00212-09| that 35 percent of the 10 to 17-year-olds
00212-10| that connected Joe Camel with cigarettes thought
00212-11| that the message being conveyed was that it was
00212-12| cool?

00212-13| A. You know, again, it has been a number
00212-14| of years since I've read this, so I can't recall
00212-15| a specific number.

00212-16| Q. Summary of results.

00212-17| A. Yes. I'm there.

00212-18| Q. First sentence: "It would seem to be
00212-19| no question about the memorability of trade
00212-20| characters as an advertising device to reach
00212-21| young people." Do you agree with that, that this
00212-22| study showed that?

00212-23| A. That they are very memorable, that
00212-24| trade characters are memorable, yes.

00212-25| Q. And that it -- the use of trade

----- PAGE00213 -----

00213-01| characters is an advertising device to reach
00213-02| young people?

00213-03| A. No. I don't agree with that. It
00213-04| says that a trade character is memorable as an
00213-05| advertising device to reach young people. It
00213-06| doesn't say trade characters are an advertising
00213-07| device to reach young people.

00213-08| Q. Right. Maybe I didn't -- could you
00213-09| repeat what you just said? Because I thought I
00213-10| had it and it slipped away.

00213-11| A. Okay. Mine doesn't say memorable.

00213-12| MR. KACZYNSKI: Mine doesn't either. That's
00213-13| what I'm looking for.

00213-14| MR. KRISTAL: Maybe we're not on the same
00213-15| page. Roman numeral six.

00213-16| MR. KACZYNSKI: Yeah.

00213-17| MR. KRISTAL: Look at that.

00213-18| THE WITNESS: Well, maybe we're not on the
00213-19| same page.

00213-20| BY MR. KRISTAL:

00213-21| Q. Have you ever seen this version of
00213-22| the Roper study?

00213-23| A. Well, I can't tell you whether I --

00213-24| Q. Until I show it to you.

00213-25| MR. KACZYNSKI: 13.

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00214-01| MR. KRISTAL: Make this 13. Thank you.

00214-02| (Deposition Exhibit 13 was marked
00214-03| for identification and is annexed hereto.)

00214-04| MR. KRISTAL: I don't know if I have another
00214-05| copy of that.

00214-06| MR. KACZYNSKI: I'll look over her shoulder.

00214-07| THE WITNESS: Whoops, there is --

00214-08| MR. KRISTAL: There you go. I thought I had
00214-09| three of everything. Thank you.

00214-10| THE WITNESS: Okay. Let's try again.

00214-11| BY MR. KRISTAL:

00214-12| Q. If you go -- let me on page -- on

00214-13| Exhibit 13, if you turn a couple of pages you

00214-14| come to a page that appears to be the same page

00214-15 | as Exhibit 12, at least the cover sheet. Are you
00214-16 | with me?
00214-17 | MR. KACZYNSKI: With you.
00214-18 | BY MR. KRISTAL:
00214-19 | Q. Now if you turn to roman numeral five
00214-20 | on 11 and 12. Let's see if that both says
00214-21 | summary of results. I think it does. Right. It
00214-22 | is just the title page for that section.
00214-23 | MR. KACZYNSKI: Yup.
00214-24 | BY MR. KRISTAL:
00214-25 | Q. Now let's all turn to the page roman

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00215-01 | numeral six, summary of results. Obviously the
00215-02 | first sentence is different. Correct?
00215-03 | A. Yes. From the other one you gave me,
00215-04 | it is.
00215-05 | Q. Right. So Exhibits 12 and 13,
00215-06 | although both of them have the same cover page,
00215-07 | different wording. Have you ever seen Exhibit
00215-08 | 13?
00215-09 | A. I don't know which one of these I've
00215-10 | seen. I suppose I would have to study them.
00215-11 | Q. All I can tell you is that 12 was
00215-12 | what was provided in your reliance materials. 13
00215-13 | I got independent of what was supplied to me by
00215-14 | counsel.
00215-15 | A. This says 11.
00215-16 | Q. I'm sorry. Then it is 11 and 12.
00215-17 | A. 11 and 13.
00215-18 | Q. Okay. Good. You are right. 12 was
00215-19 | the letter.
00215-20 | A. So 11 is what you were provided?
00215-21 | Q. Yes.
00215-22 | A. I'm not sure. I'm assuming it is 11,
00215-23 | if that's the one you were provided.
00215-24 | Q. That was the one I was provided with.
00215-25 | A. I haven't read it in a longtime, so I

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00216-01 | can't be sure which one I read.
00216-02 | Q. Okay. Let's stick with -- I'll read
00216-03 | you the first sentence of 11. "There would seem
00216-04 | to be --
00216-05 | A. You want me to go back to 11?
00216-06 | Q. I'm going to keep turning them
00216-07 | together to see if there are any other
00216-08 | differences, but for right now I'm only asking
00216-09 | about 11.
00216-10 | A. You are only asking me about 11?
00216-11 | MR. KACZYNSKI: Stay on page roman six of
00216-12 | both, maybe.
00216-13 | THE WITNESS: Okay. All right.
00216-14 | BY MR. KRISTAL:
00216-15 | Q. "There would seem to be no question
00216-16 | about the effectiveness of trade characters as an
00216-17 | advertising device to reach young people." Do
00216-18 | you agree with that?
00216-19 | A. I would say that there is no question
00216-20 | that the trade characters are memorable among
00216-21 | young people.
00216-22 | Q. Well, do you -- is there reason you
00216-23 | can -- let me back up. Do you agree the study
00216-24 | finds that there is no question about the
00216-25 | effectiveness of trade characters as an

00217-01| advertising device to reach young people?
00217-02| A. I think what the study finds is,
00217-03| there is high recognition of trade characters
00217-04| among young people.
00217-05| Q. This is the author of the study
00217-06| writing that sentence, correct?
00217-07| A. I would assume so.
00217-08| Q. So is it fair to say that at least we
00217-09| can infer that the author of the study agreed
00217-10| with the statement that he or she wrote?
00217-11| A. Yes. I would assume so if they wrote
00217-12| it.
00217-13| Q. Now the word that is different in
00217-14| that sentence that is in Exhibit 13 is the word
00217-15| memorability appears, and in Exhibit 11, the word
00217-16| effectiveness appears. Do you see that?
00217-17| A. Yes.
00217-18| Q. Do you have any explanation why that
00217-19| is so?
00217-20| MR. KACZYNSKI: Objection.
00217-21| BY MR. KRISTAL:
00217-22| Q. Do you know why that's so?
00217-23| A. Do I know why there is these two
00217-24| versions and the two words are different? No.
00217-25| Q. Okay. "Of those characters included

00218-01| in this survey, all but one enjoy very high
00218-02| levels of claimed awareness and of identification
00218-03| with the product categories advertised. Joe
00218-04| Camel is no exception. Nor, however, is he the
00218-05| best known of the character study. While over
00218-06| seven young people in ten, 73 percent, registered
00218-07| unaided awareness of Joe Camel and another 13
00218-08| percent aided awareness. He places eight in
00218-09| recognition of the nine characters evaluated
00218-10| significantly below the other seven." Do you see
00218-11| that?
00218-12| A. Yes. I see that.
00218-13| Q. And the other products that were part
00218-14| of this survey, if you turn to the listing, if
00218-15| you look on Page 18, the Energizer Bunny, Little
00218-16| Ceseear, Tony the Tiger, the Jolly Green Giant,
00218-17| the Keebler Elves and Ronald McDonald, right?
00218-18| A. Yes.
00218-19| Q. It would not be surprising that
00218-20| cigarettes would be less recognized by 10 to
00218-21| 17-year-olds than those items; is that correct?
00218-22| A. I don't know why you say that.
00218-23| Why --
00218-24| Q. Do you disagree with that?
00218-25| A. Well, yeah. I wouldn't know what to

00219-01| conclude until I had the research.
00219-02| Q. Do you know -- do we know from the
00219-03| Roper study, in terms of recognition by age
00219-04| group, what the recognition was? In other words,
00219-05| whether the 10-year-olds were recognizing Joe
00219-06| Camel as related to cigarettes more or less than
00219-07| 11-year-olds versus 12-year-olds versus
00219-08| 13-year-olds, which is what I was talking about
00219-09| earlier about the demographic break out. Do you
00219-10| see that anywhere in Exhibit 11?

00219-11| A. Do you want me to go through it? Is
00219-12| that what you are asking me to do?
00219-13| Q. Without reading every single word,
00219-14| can you take a look and flip through? I don't
00219-15| see charts or anything that breaks out any
00219-16| individual characteristics.
00219-17| A. I'll take a look through it, if
00219-18| that's what you want me to do. Is that what you
00219-19| are asking me? I mean, I won't read every word,
00219-20| but I'll look and see if I can find that. Is
00219-21| that what you are asking me to do?
00219-22| Q. Yes. If you think you can do it
00219-23| relatively quickly by scanning it as opposed
00219-24| to -- if it's going to take you a half an hour, I
00219-25| don't want you to do it because of the hour.

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00220-01| A. Okay. I'll try to do it quickly. I
00220-02| won't take a half hour.
00220-03| Q. Okay. Why don't we go off the video
00220-04| record.
00220-05| VIDEOTAPE OPERATOR: We're going off the
00220-06| record at 2:52 p.m. This is the end of tape
00220-07| number two.
00220-08| (Off the record.)
00220-09| VIDEOTAPE OPERATOR: We're back on the
00220-10| record at 2:58 p.m. This is the beginning of
00220-11| tape number three.
00220-12| BY MR. KRISTAL:
00220-13| Q. When we switched tapes, you were
00220-14| going to try to scan through the Roper report to
00220-15| see if there were any demographics broken down by
00220-16| individual ages correlating that with results.
00220-17| You had, while we were off the camera, you
00220-18| mentioned something you found. Did you find
00220-19| anything?
00220-20| A. Well, on the first page, the summary
00220-21| of results, it says: "Only three percent of
00220-22| young people say they like cigarettes or they are
00220-23| okay and this response is almost entirely from
00220-24| the age 16 to 17 year group." So that sort of
00220-25| suggests to me that they looked at the response

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00221-01| by age group.
00221-02| Q. There is no question they looked at
00221-03| the responses by age group. The question is
00221-04| whether they reported the results by age group,
00221-05| as was stated in that letter.
00221-06| A. Oh.
00221-07| Q. Do you follow what I am saying?
00221-08| A. I do. Is it in here? Is there
00221-09| anything further besides this statement?
00221-10| Q. I don't see in the Roper survey any
00221-11| breakout of data by age such as we saw in the
00221-12| Mizerski, where you could really look at what the
00221-13| 3-year-olds answered and 4-year-olds and
00221-14| 5-year-olds --
00221-15| A. I do not see that here. I do not see
00221-16| that. I see this one reference that said, you
00221-17| know --
00221-18| Q. If you turn to Page 15.
00221-19| A. Are we still on 11? Is that --
00221-20| Q. Yes. Now apparently, this is the
00221-21| reaction to the Joe Camel section of the report,

00221-22| right? That's what it is titled, this page?
00221-23| A. That's the title of this page.
00221-24| Q. And it reads: "Asked of all those
00221-25| respondents who identify Joe Camel with

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00222-01| cigarettes. How would you describe Joe Camel?
00222-02| What is the character like?" Do you see that?
00222-03| A. Yes, I do.
00222-04| Q. So that is the two questions that
00222-05| were asked of all of the children who identified
00222-06| Joe Camel with cigarettes. Is that fair to say?
00222-07| A. Yes. That's what it looks like.
00222-08| Q. If you look down at the bottom of the
00222-09| results there, apparently there were 909 children
00222-10| of whom that question was asked.
00222-11| A. Number of interviews, 909.
00222-12| Q. 35 percent of the youth who
00222-13| identified Joe Camel with cigarettes, stated:
00222-14| "Really cool, acts cool, thinks he's cool." Is
00222-15| that what this Roper survey tells us?
00222-16| A. That's what this says.
00222-17| Q. And five percent of the youth who
00222-18| identify Joe Camel with cigarettes described him
00222-19| as: "He's smooth, slick, suave." Do you see
00222-20| that?
00222-21| A. I see that.
00222-22| Q. And an additional five percent
00222-23| described him as: "Friendly, has a lot of
00222-24| friends, someone who is fun, attracts people."
00222-25| The really cool, acts cool, thinks

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00223-01| he's cool, smooth, slick, suave, friendly, has a
00223-02| lot of friends, someone who is fun and attracts
00223-03| people. Were any one of those characteristics
00223-04| part of the brand image that was trying to be
00223-05| projected to the target group of the Joe Camel
00223-06| campaign?
00223-07| A. Well, clearly smooth was smooth
00223-08| character, and so that was to mean the product
00223-09| was smooth and Joe Camel was smooth also, so I
00223-10| think that --
00223-11| Q. Were you trying to project the image
00223-12| that he was cool, acts cool?
00223-13| A. I mean, I don't remember if we sat
00223-14| that word out.
00223-15| Q. But that's certainly not too far from
00223-16| smooth, is it?
00223-17| MR. KACZYNSKI: Objection.
00223-18| BY MR. KRISTAL:
00223-19| Q. Maybe it is.
00223-20| A. They are different.
00223-21| Q. But certainly that would not be
00223-22| something adverse to the brand image you were
00223-23| trying to portray to the target group.
00223-24| A. No. I don't think it is adverse.
00223-25| Q. What about friendly, has a lot of

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00224-01| friends, someone who is fun, attracts people.
00224-02| That was part of the brand image, wasn't it?
00224-03| A. Fun certainly is.
00224-04| Q. Attracting people was not?
00224-05| A. I wouldn't say attracting people. I
00224-06| would say, you know, fun. Obviously not a loner.

00224-07| You don't want people to think Joe Camel wouldn't
00224-08| have any friends.

00224-09| Q. Only two percent, as it is written
00224-10| here, of the youth answered: "Tries to get kids
00224-11| to smoke," in response to a question asking how
00224-12| they would describe Joe Camel, what is the
00224-13| character like.

00224-14| So if you look at this sheet, Page
00224-15| 15, 20 or so -- two percent of 909, is that about
00224-16| 20, 18, 19 of the children said when they were
00224-17| asked how would you describe Joe Camel, what is
00224-18| the character like, they said tries to get kids
00224-19| to smoke. Didn't they?

00224-20| A. Two percent, that's correct.

00224-21| Q. Do you think that's a low number or a
00224-22| high number?

00224-23| A. I think -- let's see. What year was
00224-24| this done?

00224-25| Q. 1993.

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00225-01| A. Three. For that year, it is
00225-02| probably -- you know, I would expect it to be a
00225-03| lot higher because the more the media played that
00225-04| this is what the campaign is to do, the more
00225-05| people heard that, the more I think people
00225-06| believed it, and I just don't remember how much
00225-07| of that had been on television in 1993.

00225-08| Q. So if I'm understanding what you just
00225-09| said, you believe this number in the 10 to
00225-10| 17-year-olds group study by the Roper survey is
00225-11| reflective of news reporting regarding the Joe
00225-12| Camel campaign and whether he is or isn't trying
00225-13| to attract kids to smoking?

00225-14| A. I think it could have been.
00225-15| Obviously I don't know.

00225-16| Q. Was that -- I'm sorry, go ahead.

00225-17| A. There was obviously a lot of news
00225-18| reports that put it in Weekly Reader saying that.
00225-19| I mean, there were many places that it was said
00225-20| Joe Camel was targeting kids. It absolutely
00225-21| wasn't true, but people said it as though it was
00225-22| a fact, and I think there is certainly the
00225-23| potential for two percent of people to have heard
00225-24| that. I don't know in the year '93 how much of
00225-25| that had gone on yet, but two percent, it is

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00226-01| possible that they had heard that.

00226-02| Q. Do you know if there was any
00226-03| follow-up -- you could control that variable,
00226-04| could you not in a survey, by asking questions
00226-05| about whether the person being interviewed -- the
00226-06| child being interviewed watches the news, has
00226-07| read the Weekly Reader? I mean, you could design
00226-08| a study to control for that.

00226-09| A. Well, I don't know if you could or
00226-10| not, but it does state in this study that 42
00226-11| percent said they saw Joe Camel on TV, so
00226-12| obviously we didn't put Joe Camel on TV, so that
00226-13| would imply that either it is bogus reporting or
00226-14| that they had in fact seen some sort of news
00226-15| story about the campaign.

00226-16| Q. Or it is so pervasive, children
00226-17| thought they saw it on TV, when they saw it on a

00226-18 | billboard?

00226-19 | MR. KACZYNSKI: Objection.

00226-20 | THE WITNESS: I said it is a possibility it

00226-21 | could be bogus reporting, or it could be in fact

00226-22 | they saw news stories. But like -- I think it

00226-23 | was like 42 percent, I think that's a real

00226-24 | possibility.

00226-25 | MR. KRISTAL:

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00227-01 | Q. Do you know -- based on what?

00227-02 | A. What question are you asking me?

00227-03 | Q. Do you think it is a real possibility

00227-04 | that 42 percent of these children answered they

00227-05 | saw Joe Camel on television because of news

00227-06 | reporting in 1993?

00227-07 | A. No. I did not say that.

00227-08 | Q. Okay.

00227-09 | A. I did not say that.

00227-10 | Q. I thought you did. Then I apologize.

00227-11 | A. No, I did not.

00227-12 | Q. My question to you is: Are you

00227-13 | explaining the 42 percent of the children saying

00227-14 | they saw Joe Camel on TV to news about Joe Camel?

00227-15 | A. No. What I said is, I think that 42

00227-16 | percent either relates to bogus reporting or they

00227-17 | are falsely reporting they saw it on TV or they

00227-18 | actually did see it on TV, and that was probably

00227-19 | a story, news report, something that we did not

00227-20 | put on as an advertisement.

00227-21 | Q. Do you have any idea in terms of the

00227-22 | location of where this report was -- do you know

00227-23 | where this study was conducted?

00227-24 | A. There is a methodology section, if

00227-25 | you want to go to it.

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00228-01 | Q. I think if you look at the back -- it

00228-02 | may be it is all over the country, right?

00228-03 | A. Yes.

00228-04 | Q. Was there any attempt by anybody at

00228-05 | Reynolds to see how much TV coverage was given in

00228-06 | the year before the study was done --

00228-07 | MR. KACZYNSKI: Objection, foundation.

00228-08 | BY MR. KRISTAL:

00228-09 | Q. -- on the Joe Camel issue?

00228-10 | A. I don't know.

00228-11 | Q. Do you know as you sit here today,

00228-12 | how much coverage there was?

00228-13 | A. No. As I told you, obviously since

00228-14 | I'm aware of the subject, I have seen it on TV a

00228-15 | lot. I don't know how much of it was on TV in

00228-16 | 1993. It is possible, though, that people did

00228-17 | see it on TV as a result of a news report.

00228-18 | Q. The question that was asked regarding

00228-19 | the -- switching gears a little bit off of Camel.

00228-20 | Do you recall a section that the black children

00228-21 | that were surveyed recognized Newport more than

00228-22 | any other brand? Do you recall that?

00228-23 | A. No. I only skimmed this, though, for

00228-24 | that one thing that you asked me to look for,

00228-25 | so...

----- PAGE00229 -----

00229-01 | Q. Here. If you look on Page 4 of

00229-02 | Exhibit 11.

00229-03| A. Okay.
00229-04| Q. Last paragraph, second sentence.
00229-05| "Among black youth, the most frequently recalled
00229-06| cigarette brand is Newport; 31 percent, compared
00229-07| to five percent for white youth." Do you have an
00229-08| opinion as to why that is so?
00229-09| A. Yes.
00229-10| Q. What is your opinion?
00229-11| A. Well, among African American smokers,
00229-12| Newport is a much, much more popular brand, so
00229-13| I'm sure they've seen adult smokers smoking.
00229-14| Q. Were African Americans the target of
00229-15| Newport advertising?
00229-16| A. I don't know. That's another
00229-17| company. I don't have any idea what their target
00229-18| is.
00229-19| Q. Salem would be the counterpart of
00229-20| Newport for RJR?
00229-21| A. Salem is a menthol brand like Newport
00229-22| is a menthol brand.
00229-23| Q. Has Salem ever targeted African
00229-24| Americans?
00229-25| A. Salem's target is adult competitive

----- PAGE00230 -----

00230-01| menthol smokers, adult smokers of Salem. Adult
00230-02| competitive menthol smokers include African
00230-03| Americans, it includes whites, it includes
00230-04| Asians, it includes Hispanics, it includes
00230-05| Caucasians who choose to smoke who choose
00230-06| menthol.
00230-07| Q. And if the competitor brands that are
00230-08| being smoked by African Americans that are
00230-09| menthol trial -- if the competitor's menthol
00230-10| brands are being smoked by more African
00230-11| Americans, then the ads are targeting more
00230-12| disproportionately to that group?
00230-13| MR. KACZYNSKI: Object to the form.
00230-14| THE WITNESS: I really have no idea what you
00230-15| just asked.
00230-16| BY MR. KRISTAL:
00230-17| Q. Sure. If you are targeting an ad
00230-18| campaign towards competitor's menthol brand
00230-19| cigarette, which I think you said Salem is one of
00230-20| the target groups, right, competitor's menthol
00230-21| brand cigarette smokers?
00230-22| A. Right. Salem targets competitive
00230-23| brands. Salem is our brand.
00230-24| Q. I just said that.
00230-25| A. It didn't sound like that to me.

----- PAGE00231 -----

00231-01| Okay.
00231-02| Q. Salem's prime target is competitive
00231-03| brands menthol smoker?
00231-04| A. Yes. And current Salem smokers as
00231-05| well, obviously adult smokers.
00231-06| Q. Were competitive brand menthol
00231-07| smokers disproportionately African American
00231-08| compared to the African American percentage of
00231-09| the population?
00231-10| A. Of what? Of Newport or --
00231-11| Q. Yes. Any competitive menthol brand.
00231-12| A. Menthol brands in general -- African
00231-13| Americans choose menthol brands more than they

00231-14| choose nonmenthol brands, so menthol brands in
00231-15| general, have higher African American percent
00231-16| than a nonmenthol brand because African Americans
00231-17| tend to choose menthol.
00231-18| Q. And by targeting competitive menthol
00231-19| brand smokers, you are disproportionately, in
00231-20| terms of percentage of the total population,
00231-21| targeting African Americans, aren't you?
00231-22| A. No. I mean, with that particular
00231-23| brand you are targeting competitive menthol
00231-24| smokers and obviously they choose menthol more
00231-25| than nonmenthol, so there is more African

----- PAGE00232 -----

00232-01| Americans smoking menthol brands than not.
00232-02| Q. If you are successful in having
00232-03| competitive brand menthol smokers switch to Salem
00232-04| by advertising, do you not get as a result of
00232-05| that, a disproportionate amount of African
00232-06| Americans?
00232-07| MR. KACZYNSKI: Object to the form.
00232-08| THE WITNESS: Again, you don't get a --
00232-09| there are adult African American smokers. X
00232-10| percent of them choose menthol. You do not have
00232-11| a disproportionate number of adult smokers who
00232-12| choose menthol brands.
00232-13| BY MR. KRISTAL;
00232-14| Q. But it is a disproportionate amount
00232-15| compared to the African American percentage of
00232-16| the total U.S. population, is it not?
00232-17| A. We don't target the African American
00232-18| U.S. population. It is --
00232-19| Q. I'm not asking you that. What is the
00232-20| percentage in the United States of African
00232-21| Americans by population?
00232-22| A. I don't know.
00232-23| Q. Is the percentage of African
00232-24| Americans that smoke menthol brands equal to,
00232-25| greater than or less than African Americans

----- PAGE00233 -----

00233-01| percentage of the total U.S. population?
00233-02| MR. KACZYNSKI: Object to the form.
00233-03| THE WITNESS: I'm totally confused.
00233-04| BY MR. KRISTAL:
00233-05| Q. The African American percentage of
00233-06| the U.S. population is 13 percent.
00233-07| A. Right.
00233-08| Q. Do you believe that more than 13
00233-09| percent of the market share of the menthol
00233-10| smokers is made-up of African Americans?
00233-11| MR. KACZYNSKI: Object to the form.
00233-12| THE WITNESS: More than -- can you repeat
00233-13| the last part?
00233-14| BY MR. KRISTAL:
00233-15| Q. Sure. Are menthol smokers
00233-16| percentages of that market African Americans,
00233-17| more or less than 13 percent?
00233-18| A. The percent of all adult smokers who
00233-19| smoke menthol?
00233-20| Q. Right.
00233-21| A. What percent are African American?
00233-22| Q. Right.
00233-23| A. I don't recall exactly.
00233-24| Q. Well, give me a number. 50 percent?

|00234-01| Q. How high is it?
|00234-02| A. I'm guessing. I'm just guessing.
|00234-03| Q. Well, give me your best estimate.
|00234-04| A. I think it is, you know, probably
|00234-05| around 20, 25 percent of all adult menthol
|00234-06| smokers are African American.
|00234-07| Q. Would you agree that African
|00234-08| Americans don't comprise 20 to 25 percent of the
|00234-09| population?
|00234-10| A. Well, of course not.
|00234-11| Q. Is there any particular portion of
|00234-12| the Roper study that you are relying on for any
|00234-13| of your opinions in the results that I haven't
|00234-14| covered?
|00234-15| A. I would just say obviously the data
|00234-16| backing it up, but the summary of results that
|00234-17| speaks to the impression made by Joe Camel and
|00234-18| those who associated him with cigarettes is by no
|00234-19| one's --of one of enticing young people to smoke.
|00234-20| Only two percent of the youth answered, "tries to
|00234-21| get kids to smoke," in response to the question
|00234-22| asking how would you describe Joe Camel, what is
|00234-23| the character like? The most frequent response
|00234-24| is purely descriptive, although a third answered
|00234-25| they do relate him with the attribute of

|00235-01| coolness. All responses but one to a question
|00235-02| asking their view of cigarettes are decidedly
|00235-03| negative. Only three percent of young people say
|00235-04| they like cigarettes or they are okay and this is
|00235-05| the response almost entirely from the 16 to 17
|00235-06| year group.
|00235-07| Q. That's not a surprising finding, is
|00235-08| it? That the highest percentage of young people
|00235-09| that said they liked cigarettes or that they are
|00235-10| okay is from the 16 to 17-year-old group?
|00235-11| MR. KACZYNSKI: Object to the form.
|00235-12| THE WITNESS: Again, I don't know if it is
|00235-13| or not.
|00235-14| BY MR. KRISTAL:
|00235-15| Q. Well, would you expect a higher
|00235-16| percent of 10 to 17-year-olds that said they
|00235-17| liked cigarettes or that they are okay to be
|00235-18| towards the lower end of that spectrum or the
|00235-19| higher end?
|00235-20| A. I didn't have an expectation.
|00235-21| Q. If you look at -- there is Page 17,
|00235-22| feelings about cigarettes. Do you see that?
|00235-23| A. Well, no. I'm not there. I'll turn
|00235-24| to it. I'm there.
|00235-25| Q. Okay. 13 percent of them responded

|00236-01| when they were asked: "What do you personally
|00236-02| think about cigarettes? That they cause cancer,
|00236-03| lung cancer." Do you see that?
|00236-04| A. Yes.
|00236-05| Q. Do cigarettes cause cancer?
|00236-06| A. Cigarettes increase the risk of lung
|00236-07| cancer.
|00236-08| Q. Which means if you smoke, you have a
|00236-09| greater chance of getting lung cancer than if you

00236-10 | don't smoke?
00236-11 | A. That's right.
00236-12 | Q. How is that risk increased, other
00236-13 | than by cigarettes causing cancer?
00236-14 | MR. KACZYNSKI: Objection, foundation.
00236-15 | THE WITNESS: I don't understand the
00236-16 | question.
00236-17 | BY MR. KRISTAL:
00236-18 | Q. I understand the response. The --
00236-19 | well, I don't want to be argumentative. I was
00236-20 | going to say the mantra that cigarettes increase
00236-21 | the risk of cancer, I don't understand how that
00236-22 | is different than cigarettes cause cancer. If
00236-23 | you are -- how old is your nephew? He's already
00236-24 | 17.
00236-25 | When your nephew was seven, eight,
----- PAGE00237 -----
00237-01 | ten, 11 and said, Aunt Lynn, do cigarettes cause
00237-02 | cancer, would you say they increase your risk of
00237-03 | getting cancer or would you say yes or would you
00237-04 | say no?
00237-05 | MR. KACZYNSKI: Object to the form.
00237-06 | THE WITNESS: I have talked with my nephew
00237-07 | about cigarettes, and he understands -- of course
00237-08 | he's heard it in school as well, that they
00237-09 | increase the risk of disease. He understands
00237-10 | that.
00237-11 | MR. KRISTAL:
00237-12 | Q. And do they increase the risk of
00237-13 | disease in some way other than by causing
00237-14 | disease?
00237-15 | MR. KACZYNSKI: Objection, foundation. Go
00237-16 | ahead.
00237-17 | THE WITNESS: Again, what has been shown --
00237-18 | BY MR. KRISTAL:
00237-19 | Q. Right?
00237-20 | A. -- by scientists is that smokers are
00237-21 | more likely to get lung cancer than nonsmokers,
00237-22 | but the majority of the smokers don't get lung
00237-23 | cancer.
00237-24 | Q. Right.
00237-25 | A. So if your definition of cause is
----- PAGE00238 -----
00238-01 | increased risk which, you know, to many people
00238-02 | cause is just increasing the risk of it, then you
00238-03 | could say it causes it. But in a scientific
00238-04 | sense, a narrow scientific definition, that to
00238-05 | establish cause, that one thing causes another,
00238-06 | you need to understand the mechanism by which it
00238-07 | happens and be able to show how it causes
00238-08 | something else to happen, and they haven't been
00238-09 | able to do that with cigarettes. But I really
00238-10 | think it is a semantics.
00238-11 | Q. Right. That's where I --
00238-12 | A. I think when you say increased risk,
00238-13 | to the average person, increased risk is about
00238-14 | cause and the scientific definition of cause is a
00238-15 | different question.
00238-16 | Q. Are you saying that you cannot
00238-17 | make -- okay. So are you saying -- there are two
00238-18 | questions. One is a strict scientific response
00238-19 | and one is an everyday response?
00238-20 | A. Yes. An everyday response, people

00238-21| tend to define cause as increased risk. You hear
00238-22| all the time on television, they'll say something
00238-23| causes something, when really the evidence is
00238-24| that it increased the risk that that thing will
00238-25| happen.

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00239-01| Q. Do you think that in order to say
00239-02| that a substance causes a disease, we have to
00239-03| understand cellular mechanism that's going on in
00239-04| order to say that?

00239-05| A. I don't know about cellular
00239-06| mechanism, but I think for scientists to say
00239-07| that --

00239-08| Q. I'm not talking about scientists. I'm
00239-09| talking about your nephew who is 10, 12, 13, Aunt
00239-10| Lynn, I'm thinking about smoking cigarettes, do
00239-11| they cause cancer.

00239-12| A. What I say is -- I have explained
00239-13| this to him. If you smoke cigarettes, you have
00239-14| an increased likelihood of getting lung cancer
00239-15| than if you don't.

00239-16| Q. If he says does that mean it causes
00239-17| cancer or doesn't cause cancer --

00239-18| A. He hasn't asked me that.

00239-19| Q. I'm asking you that.

00239-20| A. And again, I would say, look, it
00239-21| increases the risk. Some people call that cause.
00239-22| In the strict scientific definition, no, that
00239-23| isn't cause.

00239-24| Q. Do you believe it means cause?

00239-25| A. Again, it depends upon the definition

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00240-01| of cause.

00240-02| Q. Suppose you said -- what is your
00240-03| definition of cause?

00240-04| A. I don't have one definition of cause.
00240-05| I think there is a scientific definition.

00240-06| Q. I would like --

00240-07| A. I think there is just a common
00240-08| understanding, if something increased the risk,
00240-09| it causes it.

00240-10| Q. Five percent of children in the Roper
00240-11| study who identified Joe Camel with cigarettes
00240-12| said that cigarette smoking is addictive/bad
00240-13| habit. Now if your nephew asked you that
00240-14| question when he was younger, what would you say?
00240-15| It is addictive, it is a bad habit, is it
00240-16| neither, both?

00240-17| A. It is habitforming and it is very
00240-18| hard to quit.

00240-19| Q. Do you smoke?

00240-20| A. Yes, I do.

00240-21| Q. What brand do you smoke?

00240-22| A. I smoke pretty much all of our
00240-23| brands.

00240-24| Q. No brand loyalty at all?

00240-25| A. To R. J. Reynolds Tobacco Company I

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00241-01| have brand loyalty.

00241-02| Q. You have company loyalty but not
00241-03| brand loyalty?

00241-04| A. That's right.

00241-05| Q. Do you smoke for the taste? I mean,

00241-06 | if you don't have brand loyalty, it seems to me
00241-07 | you can't be smoking for the taste.
00241-08 | A. I do. I enjoy the taste of them all.
00241-09 | Q. Of them all --
00241-10 | A. Some I like the taste better than
00241-11 | others.
00241-12 | Q. Do you think you are increasing your
00241-13 | risk of getting cancer by smoking?
00241-14 | A. I don't know if I am. I recognize as
00241-15 | a smoker it increases -- as a smoker you have
00241-16 | increased risk. The majority of people don't get
00241-17 | lung cancer. Some do.
00241-18 | Do I personally have increased risk?
00241-19 | There is no way to know that, because we don't
00241-20 | know why, you know, the vast majority of smokers
00241-21 | don't get lung cancer and some do.
00241-22 | Q. If somebody said to you, if you walk
00241-23 | into that room over there, there is gas being
00241-24 | pumped into that room and there is certain risks,
00241-25 | you are increasing your risk seven, five, ten
----- PAGE00242 -----

00242-01 | times of getting cancer by walking in the room,
00242-02 | do you walk in the room?
00242-03 | MR. KACZYNSKI: Objection.
00242-04 | BY MR. KRISTAL:
00242-05 | Q. You seem like an intelligent person,
00242-06 | obviously. I don't understand the attraction
00242-07 | maybe --
00242-08 | MR. KACZYNSKI: Objection.
00242-09 | BY MR. KRISTAL:
00242-10 | Q. You like the taste better than
00242-11 | outweighs the risk?
00242-12 | A. I very, very much enjoy smoking.
00242-13 | Very much.
00242-14 | Q. Do you know anybody who has ever
00242-15 | suffered from a disease that their doctors or
00242-16 | themselves attributed to smoking?
00242-17 | A. No.
00242-18 | Q. Have you ever tried to stop smoking?
00242-19 | A. No.
00242-20 | Q. When did you start?
00242-21 | A. After I joined the company it was
00242-22 | probably, I don't know, a year or two.
00242-23 | MR. KACZYNSKI: Do you need a break?
00242-24 | THE WITNESS: I would sort of like to take a
00242-25 | break if I could.
----- PAGE00243 -----

00243-01 | VIDEOTAPE OPERATOR: We are going off the
00243-02 | record at 3:24.
00243-03 | (Recess taken.)
00243-04 | VIDEOTAPE OPERATOR: We're back on the
00243-05 | record at 3:35 p.m.
00243-06 | MR. KACZYNSKI: I don't know if this makes a
00243-07 | difference to you in the long-run. We're about
00243-08 | four and three quarter hours.
00243-09 | MR. KRISTAL: Makes no difference to me in
00243-10 | the long-run. As I said to the other folks while
00243-11 | you were out, I can't imagine going past 4:30ish,
00243-12 | unless you guys got a lot of --
00243-13 | MR. KACZYNSKI: No.
00243-14 | MR. KRISTAL: I mean, I have a lot of
00243-15 | paperwork, but I don't believe in beating dead
00243-16 | horses.

00243-17| MR. KACZYNSKI: We'll stipulate we're not
00243-18| looking at that end of the table.
00243-19| BY MR. KRISTAL:
00243-20| Q. Exhibit 14, it is a RJR memo, April
00243-21| 29, 1988 from J.D. Weber to VonArx. The subject
00243-22| is Heroic Camel Advertising Campaign. Do you see
00243-23| that?
00243-24| A. Yes, I do.
00243-25| Q. Who is Doug Weber?

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00244-01| A. He was in our marketing research
00244-02| department.
00244-03| Q. And Mr. J.W. VonArx?
00244-04| A. I think his title at the time was
00244-05| president and CEO, but it could have just been
00244-06| president.
00244-07| Q. And you were listed as having
00244-08| received a copy of this.
00244-09| A. Yes.
00244-10| Q. Along with other folks?
00244-11| A. Yes.
00244-12| Q. Now the Heroic Camel campaign used
00244-13| Joe Camel, just had him in different -- riding a
00244-14| motorcycle, doing different activities. Is that
00244-15| the Heroic Camel?
00244-16| A. Yes.
00244-17| Q. Apparently this is, as it said here,
00244-18| a discussion piece for the Heroic Camel campaign
00244-19| for upcoming board of directors meeting. Do you
00244-20| see that?
00244-21| A. I see that.
00244-22| Q. And its intent was to be able to
00244-23| allow Mr. VonArx, at this board of directors
00244-24| meeting, to demonstrate the superiority of the
00244-25| Heroic Camel campaign to all other RJR campaigns

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00245-01| tested?
00245-02| A. Yes. That's what it says.
00245-03| Q. And the target date for the Heroic
00245-04| Camel campaign was July of 1988. Do you see that
00245-05| there?
00245-06| A. Yes, I do.
00245-07| Q. April of '88, sort of the right
00245-08| tail-end when you were senior brand manager for
00245-09| Camel?
00245-10| A. That's correct.
00245-11| Q. Did the Heroic Camel campaign begin
00245-12| at or around July of '88?
00245-13| A. It began in the later part of '88.
00245-14| Whether it was July, you know, I'm --
00245-15| Q. But it did go into effect sometime in
00245-16| '88?
00245-17| A. I think so, yes.
00245-18| Q. If you look at the next page, it
00245-19| basically -- without actually reading every word,
00245-20| it says that the Heroic Camel campaign had
00245-21| extremely positive performance versus the Bob
00245-22| Beck/Camel World ads as well as other RJR
00245-23| campaigns.
00245-24| A. Yes.
00245-25| Q. And under the advertising

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00246-01| communication bullet -- do you see that, the

00246-02| third one? Do you?
00246-03| A. Yes, I do.
00246-04| Q. "Heroic Camel campaign communicates
00246-05| an advertising message which maintains the
00246-06| positive aspects of the Bob Beck/Camel World
00246-07| communication but also adds dimensions which
00246-08| strengthen Camel's appeal among younger adult
00246-09| target smokers- equals Bob Beck in communication
00246-10| of a masculine, independent user image. Exceeds
00246-11| Bob Beck as a more fun, social and likeable
00246-12| personality." Do you see that?
00246-13| A. Yes, I do.
00246-14| Q. Now, that communication message is
00246-15| very similar to what was described on Page 14 of
00246-16| Roper to 10 to 17-year-olds; is it not?
00246-17| A. I'll go back and compare them if you
00246-18| would like.
00246-19| Q. Sure. That's what I was asking you
00246-20| to do. I'm sorry, it is Page 15. Certainly
00246-21| someone who is fun would be consistent with the
00246-22| message that is trying to be communicated of
00246-23| being more fun, right? Do you see that?
00246-24| A. Gosh. Oh, yes. Final one.
00246-25| Friendly, has friends, fun.

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00247-01| Q. Right. And then of course social
00247-02| would include attracting people, someone who has
00247-03| lots of friends?
00247-04| A. Well, I don't know if it includes
00247-05| attracting people. But certainly friendly. Has
00247-06| friends.
00247-07| Q. Right. Likeable personality?
00247-08| A. Right.
00247-09| Q. That would be someone who has a lot
00247-10| of friends who attracts people?
00247-11| A. Yes. Yes. The five percent who said
00247-12| that that's consistent.
00247-13| Q. And of the five percent would be 45
00247-14| of the 10 to 17-year-olds, right? 45 of the 909?
00247-15| A. Of the 900, approximately. I haven't
00247-16| done the math.
00247-17| Q. Certainly a five percent market share
00247-18| of your target group would have been good to
00247-19| achieve, would it not, with respect to an ad
00247-20| campaign?
00247-21| A. If we achieve five percent of adult
00247-22| smokers 18 to 24 choosing Camel?
00247-23| Q. Right.
00247-24| A. That would have been okay. I mean,
00247-25| we did significantly better than that. That

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00248-01| wasn't -- I wouldn't say that would be great.
00248-02| Q. But it certainly wouldn't be a
00248-03| failure if that happened. Maybe you had a higher
00248-04| standard then.
00248-05| A. If that's all you got, that would be
00248-06| a failure.
00248-07| Q. Now, let me just show you, because I
00248-08| think this will shorten part of it, the Mangini
00248-09| testimony on Page 122 where you said --
00248-10| Mr. Jansic asked you: "What I am asking you is,
00248-11| how do you measure if the advertising is
00248-12| effective in achieving your goal of maintaining

00248-13 | brand loyalty or getting switchers." and you
00248-14 | said: "Right. And if we achieve our goal, we
00248-15 | assume the advertising has been effective at
00248-16 | doing that." Do you see that?
00248-17 | A. Yes. I see that.
00248-18 | Q. Do you still agree with that, that
00248-19 | the measure of whether the advertising has been
00248-20 | effective is whether or not you achieve your
00248-21 | goal?
00248-22 | A. Yeah. And it is not just the
00248-23 | advertising, it is the whole marketing for the
00248-24 | brand, obviously, that contributes. It is not
00248-25 | just the advertising, it is the total effect.

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00249-01 | But how we measure success is, are we successful
00249-02 | at maintaining brand loyalty and are we
00249-03 | successful at getting adult competitive smokers
00249-04 | to switch.
00249-05 | Q. And you track those groups to see
00249-06 | whether you have either maintained or increased
00249-07 | brand loyalty or whether you have increased
00249-08 | switchers in order to determine whether a
00249-09 | campaign was effective?
00249-10 | A. Yes, we do.
00249-11 | Q. And do you believe the Joe Camel
00249-12 | campaign was effective?
00249-13 | A. In conjunction with the total
00249-14 | marketing for the Camel brand, I believe that the
00249-15 | Joe Camel campaign was successful. It was by no
00249-16 | means just the Joe Camel campaign, but if you say
00249-17 | the total marketing of the brand, yes.
00249-18 | Q. And the predominant part of the total
00249-19 | marketing was the Joe Camel campaign, at least
00249-20 | from '88 to '97, '98?
00249-21 | A. Sorry. That was the predominant part
00249-22 | of the advertising, but if you are talking about
00249-23 | the marketing of the brand, which includes all of
00249-24 | those things, no.
00249-25 | Q. Now, do you compare percentages? Is

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00250-01 | that what you track? In other words, you look at
00250-02 | a certain percent of current Camel smokers and
00250-03 | compare that to an increase in market share as
00250-04 | you are comparing prior to the campaign, after
00250-05 | the campaign on a yearly basis, to see how the
00250-06 | product is doing?
00250-07 | A. We track our share of market to see
00250-08 | how we're doing.
00250-09 | Q. If the share of underage smokers of
00250-10 | cigarettes increased more for Camel smokers, does
00250-11 | that say anything about the effectiveness of the
00250-12 | Camel campaign in reaching those smokers?
00250-13 | A. Not necessarily. It could be that it
00250-14 | effected brand choice. It also could be that
00250-15 | they are imitating the brand choice of younger
00250-16 | adult smokers.
00250-17 | Q. Okay. And that's something you know
00250-18 | certainly from your focus groups. I think I saw
00250-19 | one of the memos on focus group regarding, to a
00250-20 | certain extent, trying to segregate out some of
00250-21 | the younger focus group members, i.e., 18 and
00250-22 | 19-years-old than the older because there tended
00250-23 | to be influence.

|00250-24| MR. KACZYNSKI: Object to the form.
|00250-25| BY MR. KRISTAL:

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|00251-01| Q. Forget about what I said about what I
|00251-02| recall. Is that generally a correct statement?
|00251-03| A. Generally we segregate age groups
|00251-04| because they do tend to have different reactions,
|00251-05| so when I was developing the Joe Camel campaign,
|00251-06| we segregated 18 to 20 from 25 to 34 and then
|00251-07| from Camel smokers 18 plus.
|00251-08| Q. Other than having different
|00251-09| reactions, is it correct that the younger folks
|00251-10| would be more influenced perhaps in their
|00251-11| reaction or their statements by the older folks
|00251-12| in the group, the over 20 to 24 group?
|00251-13| If you don't agree with that, that's
|00251-14| fine, but I'll have to go dig -- I want you to
|00251-15| give an honest answer.
|00251-16| A. I wouldn't say it is generally true.
|00251-17| I would say that you know that could happen. We
|00251-18| often segregate the adult smokers male versus
|00251-19| female also because I would say that's more true
|00251-20| about men versus women, that sometimes men will
|00251-21| dominate the group than ages.
|00251-22| Q. But it is not surprising that
|00251-23| underage smokers may choose Camel because they
|00251-24| are emulating overage smokers who are smoking
|00251-25| Camel?

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|00252-01| MR. KACZYNSKI: Objection.
|00252-02| THE WITNESS: I think that it's possible for
|00252-03| underage people who smoke that they look at the
|00252-04| brand choices of younger adult smokers.
|00252-05| BY MR. KRISTAL:
|00252-06| Q. Okay.
|00252-07| A. I think that's possible. I don't
|00252-08| know.
|00252-09| Q. Let me switch gears a little bit. Do
|00252-10| you remember project Spa, S-P-A?
|00252-11| A. That does not ring a bell.
|00252-12| Q. Okay.
|00252-13| (Deposition Exhibit 15 was marked
|00252-14| for identification and is annexed hereto.)
|00252-15| BY MR. KRISTAL:
|00252-16| Q. I'll mark this as 15. This document,
|00252-17| the first page is a distribution sheet, although
|00252-18| it is actually the -- see the Bates numbers are a
|00252-19| little off. First page has RJN 046406. The next
|00252-20| page is 46304. Do you see that?
|00252-21| A. Yes, I see that.
|00252-22| Q. Look at the third page and let me
|00252-23| ask, the third page is entitled Project Spa
|00252-24| presentation, board of directors 7-16-87. Do you
|00252-25| see that?

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|00253-01| A. Yes. So I think that this is pretty
|00253-02| impossible that this distribution sheet goes with
|00253-03| this, because in 1987, my name was Breninger.
|00253-04| Q. Okay. Well, that may very well be,
|00253-05| so let's take these top two sheets off. How is
|00253-06| that?
|00253-07| A. Okay.
|00253-08| Q. Let's throw those away and let me

00253-09 | restamp the exhibit.
00253-10 | A. Okay.
00253-11 | MR. KACZYNSKI: It's a good thing we nailed
00253-12 | down when you met your husband.
00253-13 | THE WITNESS: Right.
00253-14 | MR. KRISTAL: See, I knew there was a reason
00253-15 | that I asked that earlier.
00253-16 | BY MR. KRISTAL:
00253-17 | Q. Were you aware at all at any point in
00253-18 | time since 1982 to the present, of efforts to
00253-19 | develop smokeless cigarettes or cigarette
00253-20 | substitutes?
00253-21 | A. To develop the Premiere brand, if
00253-22 | that's what you are talking about.
00253-23 | Q. That is what I am talking about.
00253-24 | This document doesn't refer to that. What is the
00253-25 | Premiere brand?

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00254-01 | A. The Premiere brand was a brand that
00254-02 | we test marketed back in 1988, that was designed
00254-03 | to reduce biological activity and environmental
00254-04 | tobacco smoke and selective compounds, compounds
00254-05 | produced from a standard cigarette.
00254-06 | Q. Were you involved at all in
00254-07 | development or test marketing of Premiere?
00254-08 | A. No. I didn't really get involved
00254-09 | with it until, I think, it was like '89.
00254-10 | Q. Okay. And what was that, when you
00254-11 | were in the special markets?
00254-12 | A. It would have -- you know, can I look
00254-13 | at this real quick?
00254-14 | Q. Of course.
00254-15 | A. I think that would have been -- okay,
00254-16 | the latter half probably 1990. It was after it
00254-17 | was pulled from test market and it was just back
00254-18 | with R&D as a development project.
00254-19 | Q. Okay. That's when you were vice
00254-20 | president strategic marketing planning?
00254-21 | A. Yes.
00254-22 | Q. Now, did you attend meetings in which
00254-23 | the Premiere cigarette was discussed, the
00254-24 | concept, the marketing, the test marketing?
00254-25 | A. I'm sorry. Excuse me. Prior to when

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00255-01 | I --
00255-02 | Q. At any point in time.
00255-03 | A. Sure. From 1990 forward, yes.
00255-04 | Q. At what point was Premiere no longer
00255-05 | considered an option at RJR?
00255-06 | A. We put it in test market, I think it
00255-07 | was like October of '88, and by March of '89, it
00255-08 | was determined that it was a failure.
00255-09 | Q. Did you have any discussions with any
00255-10 | attorneys regarding the import of marketing on a
00255-11 | commercial basis a lower biologically active
00255-12 | cigarette?
00255-13 | A. Are you saying like when we were
00255-14 | doing Premiere? Is this about Premiere?
00255-15 | Q. Yes. Well, Premiere was a lower
00255-16 | biologically active cigarette, was it not?
00255-17 | A. Yes.
00255-18 | Q. I believe -- well, it was not
00255-19 | commercially marketed because of the taste. Is

00255-20 | that what your understanding is?
00255-21 | A. Well, Premiere failed in test market
00255-22 | for lots of reasons, but...
00255-23 | Q. What was --
00255-24 | A. Taste was a big one.
00255-25 | Q. Did you ever smoke a Premiere

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00256-01 | cigarette?
00256-02 | A. Yes.
00256-03 | Q. What did it taste like?
00256-04 | A. Especially the nonmenthol, had this
00256-05 | real awful -- strange taste. It was bad and they
00256-06 | smelled really bad. It wasn't just taste, it was
00256-07 | that they smelled bad.
00256-08 | Q. Was there ever any -- with respect to
00256-09 | the test marketing, ever any ad campaigns or any
00256-10 | sort of promotional campaigns designed or
00256-11 | discussed regarding the Premiere cigarette?
00256-12 | A. Well, there was a campaign to test
00256-13 | market the Premiere cigarette.
00256-14 | Q. Did that involve any sort of
00256-15 | advertising or promotion?
00256-16 | A. Yes.
00256-17 | Q. Were you involved in that at all?
00256-18 | A. For Premiere, no.
00256-19 | Q. The promotion that was developed, did
00256-20 | the materials discuss that it reduced biological
00256-21 | activity?
00256-22 | A. It discussed, I believe, the campaign
00256-23 | for test market on Premiere reduced controversial
00256-24 | compounds.
00256-25 | Q. Okay. The lawyer must have thought

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00257-01 | that one up --
00257-02 | MR. KACZYNSKI: Don't answer that.
00257-03 | THE WITNESS: I wasn't in --
00257-04 | MR. KACZYNSKI: Don't answer that.
00257-05 | BY MR. KRISTAL:
00257-06 | Q. Okay. Biological activity -- well,
00257-07 | tell me if I'm articulating it the way you
00257-08 | understand it, is that you could do certain tests
00257-09 | with cigarette smoke condensate or cigarette
00257-10 | smoke itself, to determine whether, for example,
00257-11 | it would grow tumors on the back of mice, or an
00257-12 | analysis doing certain tests. Is that your
00257-13 | understanding of what biological activity was?
00257-14 | A. I'm not a scientist and so generally
00257-15 | speaking, yes, but I can't answer any specific
00257-16 | questions on that. I really do not have the
00257-17 | scientific expertise to.
00257-18 | Q. But the purpose behind the Premiere
00257-19 | brand was to try to find a cigarette with
00257-20 | lower -- was it controversial compounds like tar?
00257-21 | Is that what they were trying to reduce, the R&D
00257-22 | people?
00257-23 | A. It wasn't just tar, it was all of the
00257-24 | compounds that are produced when you smoke a
00257-25 | cigarette. It is the compounds that -- not all

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00258-01 | compounds, but compounds that had been associated
00258-02 | in previous science with increasing the risk of
00258-03 | disease, so that if you could reduce those
00258-04 | compounds, then you would have a chance that you

00258-05 | would reduce the risk of the disease.
00258-06 | Q. The disease? Was there any
00258-07 | discussion that you recall, regarding the attempt
00258-08 | to market Premiere, related to concerns about
00258-09 | litigation?
00258-10 | MR. KACZYNSKI: Objection. Foundation.
00258-11 | THE WITNESS: Again, I do not -- Premiere
00258-12 | was already dead when I picked it up, so I wasn't
00258-13 | involved in those discussions, if there were any
00258-14 | discussions like that. I picked it up after it
00258-15 | had been decided that it is going to be pulled
00258-16 | from market and it is going to go back to R&D as
00258-17 | a development project.
00258-18 | BY MR. KRISTAL:
00258-19 | Q. Okay. At that point in time, it was
00258-20 | back in R&D?
00258-21 | A. Yes.
00258-22 | Q. And then what happened?
00258-23 | A. We kept working on the product,
00258-24 | because obviously the product was very -- did not
00258-25 | meet consumer expectations in any way, shape or

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00259-01 | form. It tasted bad and smelled bad and so we --
00259-02 | Q. If consumers would want a lower
00259-03 | biological cigarette, it certainly would meet
00259-04 | those demands, right, if it reduced their risk of
00259-05 | getting cancer? That's a nice concept.
00259-06 | A. I think reducing risk is a good
00259-07 | concept, yes. I agree with that. The problem
00259-08 | is, you would have to have a cigarette that
00259-09 | tasted good. People enjoy smoking and they smoke
00259-10 | because they like the taste of it. People
00259-11 | rejected the taste and smell of the cigarette.
00259-12 | Q. Were the people in the test markets
00259-13 | informed that this may reduce their risk of
00259-14 | getting disease from smoking?
00259-15 | A. Well, you can't say that. What you
00259-16 | can say is, it reduces controversial compounds.
00259-17 | To get to --
00259-18 | Q. Well, did they ask you what does that
00259-19 | mean?
00259-20 | A. Again, I wasn't --
00259-21 | Q. Do you know if they asked the people
00259-22 | running the test marketing what the heck does
00259-23 | reducing controversial compounds mean?
00259-24 | A. I don't know that.
00259-25 | Q. Do you think a layperson in a market

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00260-01 | test would know what reducing controversial
00260-02 | compounds means?
00260-03 | MR. KACZYNSKI: Objection. Foundation.
00260-04 | THE WITNESS: Again, I didn't go to those
00260-05 | groups. I'm assuming they felt pretty good about
00260-06 | it, which is why they put it in there.
00260-07 | BY MR. KRISTAL:
00260-08 | Q. I completely lost you there.
00260-09 | A. I'm assuming they felt like it
00260-10 | communicated what they wanted to, which is why
00260-11 | they put it in there. But I wasn't there.
00260-12 | Q. I'm sure they felt it communicated
00260-13 | what they wanted to.
00260-14 | Did the Premiere ever come back from
00260-15 | R&D to the marketing group under your supervision

00260-16 | for any work at all?
00260-17 | A. Yes.
00260-18 | Q. And what did that happen?
00260-19 | A. Well, we were working on it as just
00260-20 | product work, while it had -- when I was in
00260-21 | strategic planning, marketing planning. We
00260-22 | weren't doing any marketing work because R&D said
00260-23 | it is going to take a longtime to fix these
00260-24 | product problems. So we weren't working on the
00260-25 | marketing. And then after I left strategic

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00261-01 | planning, I was not working on it for a longtime
00261-02 | again, but then when I took over as head of
00261-03 | marketing, it now is under me again and has been
00261-04 | since I took over as head of marketing.
00261-05 | Q. Is R&D still working out the taste
00261-06 | problems in Premiere?
00261-07 | A. Well, it is not Premiere anymore. It
00261-08 | is Eclipse.
00261-09 | Q. That's being test marketed now, is it
00261-10 | not?
00261-11 | A. Yes.
00261-12 | Q. In Georgia?
00261-13 | A. It is in Lincoln, Nebraska; Atlanta,
00261-14 | Georgia; Chattanooga, Tennessee.
00261-15 | Q. Have you smoked an Eclipse cigarette?
00261-16 | A. Yes.
00261-17 | Q. How did R&D do?
00261-18 | A. I think --
00261-19 | Q. Is it better than Premiere?
00261-20 | A. I think it is way better.
00261-21 | Unfortunately, smokers in the test market, while
00261-22 | it did a little bit better than Premiere, it has
00261-23 | not done very well.
00261-24 | Q. What is the lower biological activity
00261-25 | being called now, if anything different?

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00262-01 | A. The advertising on Eclipse now is
00262-02 | really about reduced smoke.
00262-03 | Q. Is there anything about reducing
00262-04 | biological activity, reducing controversial
00262-05 | compounds, being less risky?
00262-06 | A. Well, there are some -- not less.
00262-07 | You cannot say that. Now there are -- I would
00262-08 | have to look at the advertising and see exactly
00262-09 | what is in. I know we show filters and I just
00262-10 | can't remember exactly what is in there. I have
00262-11 | to refresh my memory.
00262-12 | Q. Does this document, Exhibit 15, talk
00262-13 | about the Spa cigarette? Was this a predecessor
00262-14 | to the same product that is the Premiere
00262-15 | predecessor?
00262-16 | A. Well, you know --
00262-17 | Q. In other words, Premiere became
00262-18 | Eclipse, because it sounds like Premiere to me,
00262-19 | but....
00262-20 | MR. KACZYNSKI: Objection, foundation.
00262-21 | THE WITNESS: See, I don't think I ever saw
00262-22 | this. I don't ever remember seeing this, and I
00262-23 | have some vague recollection that maybe Spa was
00262-24 | the name for Premiere, but I don't know.
00262-25 | BY MR. KRISTAL:

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00263-01 Q. If you look on Page 2, for example,
00263-02 it says it "is a cigarette which contains tobacco
00263-03 and looks and smokes like a traditional
00263-04 cigarette. However, it does not burn tobacco."
00263-05 Does that sound like the Premiere cigarette?

00263-06 A. Yes, it does. I mean, that's what it
00263-07 sounds like to me. But again, I don't know. I
00263-08 didn't -- that's what it sounds like to me,
00263-09 though.

00263-10 Q. And then it is written: "It has been
00263-11 alleged that certain of the by-products of
00263-12 burning tobacco in a traditional cigarette cause
00263-13 lung cancer." Do you see that?

00263-14 A. Yes, I see that.

00263-15 Q. In 1987, did you believe that
00263-16 cigarette smoking increased the risk of lung
00263-17 cancer?

00263-18 A. Yes.

00263-19 Q. Did you think it was an allegation?

00263-20 A. Well, this is cause and this goes
00263-21 back to that scientific definition of cause. I
00263-22 believe -- again, I have not seen this document
00263-23 before, so I'm only guessing, because I don't
00263-24 have knowledge, but I would suspect that's what
00263-25 they were referring to.

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00264-01 Q. So if somebody said today cigarette
00264-02 smoking causes lung cancer, would you call that
00264-03 an allegation?

00264-04 A. Well, I would say it depends upon
00264-05 your definition of cause. If by cause you mean
00264-06 increased risk, then, you know, I'm there with
00264-07 you, but if you are talking about a scientific
00264-08 term, I'm not there with you.

00264-09 Q. Do you know what RJ Reynolds'
00264-10 historical position has been on the issue of
00264-11 whether or not cigarette smoking increases the
00264-12 risk of any disease? Have you read any documents
00264-13 on that? Have you seen any documents? Had any
00264-14 discussions? Been to any meetings?

00264-15 A. Yeah. I've seen discussions. Or, I
00264-16 mean, I've seen old documents.

00264-17 Q. What is your understanding?

00264-18 A. I think that like the countries, the
00264-19 company's position evolved over time. You know,
00264-20 but I know that the company's position is that we
00264-21 believe it increases the risk of certain
00264-22 diseases.

00264-23 Q. And as of approximately when has that
00264-24 been the company's position?

00264-25 A. I couldn't tell you that.

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00265-01 Q. Well, has it been since you've been
00265-02 executive vice president?

00265-03 A. That it increases the risk, I would
00265-04 say so, yeah. Oh, yeah, definitely.

00265-05 Q. How about do -- the prior position,
00265-06 was that when you were senior vice president?

00265-07 A. You know, to the best of my
00265-08 recollection, I believe that the company believes
00265-09 that studies had showed increased risk of disease
00265-10 for smokers versus nonsmokers.

00265-11 Q. Since?

00265-12| A. Since I've been with the company.
00265-13| Q. If RJR was making public statements
00265-14| that smoking -- or it has not been proven that
00265-15| smoking causes lung cancer to the public -- well,
00265-16| try it again.
00265-17| Since you've been with the company,
00265-18| has RJR, to your knowledge, ever made a public
00265-19| statement that it has not been proven that
00265-20| smoking causes lung cancer?
00265-21| A. I can't recall specifically if there
00265-22| has been a public statement on that, but I do
00265-23| believe even today, that the company's position,
00265-24| if you are using the scientific definition of
00265-25| cause, that that has not been proven.

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00266-01| Q. Do you think the general public has
00266-02| an understanding of the distinction you are
00266-03| making?
00266-04| A. I don't know, but I think that the
00266-05| general -- I know that the general public
00266-06| believes and is aware that smoking increases the
00266-07| risk of these diseases.
00266-08| Q. Well, that's not the question I'm
00266-09| asking you. The question is, do you have a
00266-10| belief as to whether or not the general public is
00266-11| making the distinction that you are making
00266-12| between a strict scientific definition of
00266-13| causation and increasing risk?
00266-14| MR. KACZYNSKI: Objection, foundation.
00266-15| THE WITNESS: I don't know.
00266-16| BY MR. KRISTAL:
00266-17| Q. Has R.J. Reynolds done anything to
00266-18| find out whether or not the public is
00266-19| understanding the difference you are now making?
00266-20| MR. KACZYNSKI: Objection, foundation.
00266-21| THE WITNESS: I don't know.
00266-22| BY MR. KRISTAL:
00266-23| Q. Was there a patent for the Premiere
00266-24| cigarette?
00266-25| A. There -- I think that there were a

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00267-01| lot -- quite a few patents on the different
00267-02| technologies involved.
00267-03| Q. Other than the Premiere cigarette,
00267-04| are you aware of any other cigarettes designed to
00267-05| reduce biological activity that R.J. Reynolds'
00267-06| R&D was working on?
00267-07| A. Well, can we say in the general
00267-08| category of reducing these compounds, because I'm
00267-09| not a scientist and I'm not sure exactly
00267-10| biological activity, so we had another cigarette
00267-11| we developed that selectively reduced compounds
00267-12| in the cigarette. That the cigarette --
00267-13| Q. What was that called?
00267-14| A. It was Winston Select Flavor Filter
00267-15| and it had like a carbon-type filter and then a
00267-16| standard filter attached to it.
00267-17| Q. And what was that selectively
00267-18| filtering?
00267-19| A. Well, it reduced --
00267-20| Q. What compound?
00267-21| A. It reduced some of the compounds. I
00267-22| think was like alkaloids or acetones. I can't

00267-23| remember all of them. I would have to go back
00267-24| and look, but it selectively reduced several of
00267-25| the compounds that are produced by a standard

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00268-01| burning cigarette.
00268-02| Q. When was Winston Select first
00268-03| commercially marketed?
00268-04| A. We just -- Winston Select was
00268-05| commercially marketed as a brand before that, but
00268-06| then we changed Winston Select and went to test
00268-07| market to try this different version of it. That
00268-08| was like --
00268-09| Q. When?
00268-10| A. I believe like 1995 or six.
00268-11| Q. Has the product that was test
00268-12| marketed been commercially developed?
00268-13| A. We test marketed it and it was
00268-14| unsuccessful.
00268-15| Q. Any other such attempts to reduce
00268-16| compounds, controversial compounds?
00268-17| A. Well, I think that R&D has worked on
00268-18| other kinds of designs, but in terms of getting
00268-19| total level of a test market, no. I don't -- I
00268-20| can't recall any.
00268-21| Q. Did RJR ever do any research into
00268-22| whether or not the smokers it was marketing to
00268-23| believed that low tar, low nicotine cigarettes
00268-24| reduced the risk of disease?
00268-25| MR. KACZYNSKI: Objection, foundation.

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00269-01| THE WITNESS: I don't know.
00269-02| BY MR. KRISTAL:
00269-03| Q. The No Bull 100 percent tobacco,
00269-04| that's a Winston ad?
00269-05| A. No Bull 100 percent tobacco would be
00269-06| a Winston ad.
00269-07| Q. Okay. Were you involved with that at
00269-08| all?
00269-09| A. Yes.
00269-10| Q. When was Winston not 100 percent
00269-11| tobacco?
00269-12| A. It has had additives. There have
00269-13| been additives in the tobacco.
00269-14| Q. Since when?
00269-15| A. Oh, I don't know. For as long as I
00269-16| can remember. There -- you know, that's pretty
00269-17| standard, for cigarettes to have additives.
00269-18| Q. Were there any ammonia compounds that
00269-19| were the additives in the Winston cigarette?
00269-20| A. I don't know.
00269-21| Q. When was the initial development of
00269-22| the No Bull campaign? I don't know what it was
00269-23| called. Does it have a name?
00269-24| A. The No Bull campaign, that's fine.
00269-25| Q. When was that first developed?

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00270-01| A. I think like '95, '96.
00270-02| Q. And when did it first actually hit
00270-03| the public? I mean, I only recall seeing the
00270-04| bill boards within maybe the last year or so. Is
00270-05| that --
00270-06| A. Nationally it has been out for about
00270-07| a year and a half, and then it was in a test

00270-08 | market before that.
00270-09 | Q. Was there any discussion in your
00270-10 | involvement in that campaign as to what do you
00270-11 | folks -- what have been added to this tobacco
00270-12 | beforehand that we are now taking out?
00270-13 | A. We spelled it out in ads. We, in
00270-14 | several of the product ads, we would say it is
00270-15 | additives and we tried different versions. I
00270-16 | can't remember exactly all the ones we've run,
00270-17 | but we've spelled out some of the additives.
00270-18 | Q. Was any ammonia compound spelled out?
00270-19 | A. No. I don't think so. I don't know
00270-20 | as that was an additive.
00270-21 | Q. Whether it was or it wasn't, as far
00270-22 | as you know, it was never spelled out as having
00270-23 | been one of the additives?
00270-24 | A. I don't think so.
00270-25 | Q. What were some of the additives that
----- PAGE00271 -----
00271-01 | you told the public were in tobacco?
00271-02 | A. Well, I can't remember the exact ads.
00271-03 | We've tried so many ads, I can't remember if we
00271-04 | finally ended up running the ones that say sugar
00271-05 | and coco and licorice and there were some others
00271-06 | on the list, and whether we actually ran those or
00271-07 | went with the simpler one and just said other
00271-08 | brands six percent additives, Winston has no
00271-09 | additives, could have been we landed there and
00271-10 | did some of them in test market and didn't do
00271-11 | them nationally. I just can't remember.
00271-12 | Q. In the marketing of the No Bull
00271-13 | campaign, did you ever hear or discuss additives
00271-14 | being put into cigarette tobacco to have an
00271-15 | effect on nicotine?
00271-16 | A. No.
00271-17 | Q. Do you know what impact is in
00271-18 | smoking? Have you ever heard that term, impact?
00271-19 | A. I've heard that term.
00271-20 | Q. What is your understanding of impact?
00271-21 | A. Well, I don't really know, I guess.
00271-22 | I would say how strong you think the cigarette
00271-23 | is, maybe.
00271-24 | Q. Do you have any idea what in the
00271-25 | tobacco effects impact?
----- PAGE00272 -----
00272-01 | A. Well, to me how strong a cigarette
00272-02 | is.
00272-03 | Q. Right.
00272-04 | A. Being a smoker, and I think what
00272-05 | effects it is how strong the tobacco is, how much
00272-06 | tobacco taste there is, how much strength there
00272-07 | is to the cigarette.
00272-08 | Q. No. I understand that. What makes
00272-09 | it stronger, though, just the type of tobacco?
00272-10 | A. Well, higher tar and nicotine
00272-11 | cigarettes are stronger. Lower tar and nicotine
00272-12 | cigarettes are lighter.
00272-13 | Q. Do you know if RJR put any additives
00272-14 | into its cigarettes to increase the nicotine
00272-15 | contents?
00272-16 | A. Like what do you mean, add nicotine?
00272-17 | Q. Like dimonophosphate, any ammonia
00272-18 | compound that would have an effect of liberating

00272-19| nicotine.
00272-20| A. I'm not scientific on this whole
00272-21| liberating nicotine thing. We used the additives
00272-22| that have been to develop the taste
00272-23| characteristics of the product or for consistency
00272-24| of the project, and we have not, to my knowledge,
00272-25| put additives in to get more nicotine. I mean,

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00273-01| if you wanted to get more nicotine, you could
00273-02| smoke a higher tar and nicotine brand and in
00273-03| general, people's tastes have moved towards
00273-04| wanting lower tar and nicotine, not higher tar
00273-05| and nicotine.
00273-06| Q. Do you have any understanding of the
00273-07| difference between what's called free nicotine
00273-08| and bound nicotine in tobacco smoking?
00273-09| A. You know, I've heard it but I do not
00273-10| understand it.
00273-11| Q. The new Salem ads, are you involved
00273-12| with those?
00273-13| A. Yes.
00273-14| Q. What is that all about?
00273-15| MR. KACZYNSKI: Object to the form.
00273-16| Notwithstanding, I would like to hear the answer.
00273-17| BY MR. KRISTAL:
00273-18| Q. I mean, unless it is kind of a tease
00273-19| and then it is going to be unveiled later on, but
00273-20| I am certainly trying to figure it. I've seen
00273-21| the one with the little green droplet sort of and
00273-22| one that looks like an amphibian eye with the
00273-23| kind of Yin and Yang symbol.
00273-24| A. What did the ad say?
00273-25| Q. Salem or something with a new world.

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00274-01| I don't recall. Some slogan. I really don't
00274-02| recall. I guess I fall in the category of those
00274-03| 10 to 17-year-olds that don't recall the slogan.
00274-04| What is the image that's trying to be developed?
00274-05| A. We've introduced a new product in a
00274-06| new packaging on Salem and green water droplet
00274-07| you saw comes from the design on the pack, and
00274-08| we're trying to gain awareness for the new
00274-09| packaging and new product and advertising that
00274-10| goes with it, but it is basically an icon that
00274-11| comes from the pack and the new pack is the green
00274-12| colors.
00274-13| Q. It is more of a packaging awareness
00274-14| kind of campaign?
00274-15| A. No. It is just in the packaging
00274-16| awareness. The stuff you are referring to is
00274-17| more specific about the icon that came from the
00274-18| pack, but it includes print advertising and
00274-19| Q. Is there a -- what is the target
00274-20| group of that, the prime target group of that
00274-21| campaign, the current campaign?
00274-22| A. It would be competitive adult menthol
00274-23| smokers because Salem is menthol, 21 to 29 and
00274-24| then Salem smokers 21 plus.
00274-25| Q. The No Bull campaign, is that more

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00275-01| geared towards health conscious people, you know,
00275-02| natural --
00275-03| A. No.

00275-04| Q. -- product people?
00275-05| A. No. And it is not -- it doesn't say
00275-06| natural, it says no additives.
00275-07| Q. Right.
00275-08| A. And, no, it is not geared for that.
00275-09| Q. What is the prime target for that
00275-10| campaign?
00275-11| A. Adult competitive smokers 21 to 29,
00275-12| nonmenthol, obviously because Winston is a
00275-13| nonmenthol brand and Winston smokers 21 plus and
00275-14| the image for the brand is No Bull. That means
00275-15| like straight-up, true to one's self, honest, you
00275-16| say what is on your mind.
00275-17| Q. Okay. Why don't we take a break.
00275-18| VIDEOTAPE OPERATOR: We're going off the
00275-19| record at 4:11.
00275-20| (Recess taken.)
00275-21| VIDEOTAPE OPERATOR: We're back on the
00275-22| record at 4:19 p.m.
00275-23| MR. KRISTAL: I have no further questions,
00275-24| just subject to the caveat about that documents
00275-25| in a box.

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00276-01| MR. KACZYNSKI: And we don't have any
00276-02| questions either. We're done.
00276-03| VIDEOTAPE OPERATOR: We're going off the
00276-04| record at 4:19 p.m.
00276-05| (TIME NOTED 4:19 P.M.)
00276-06| I declare under penalty of perjury
00276-07| under the laws of the State of Ohio
00276-08| that the foregoing is true and correct.
00276-09| Executed on _____, 19____,
00276-10| at _____.
00276-11| _____
00276-12| SIGNATURE OF THE WITNESS

----- PAGE00277 -----

00277-01| CERTIFICATE OF REPORTER
00277-02| STATE OF NORTH CAROLINA)
00277-03| COUNTY OF STOKES)
00277-04| I, Jane F. Allen, Registered Professional
00277-05| Reporter, do hereby certify:
00277-06| That the foregoing deposition of LYNN
00277-07| BEASLEY was taken before me at the time and place
00277-08| therein set forth, at which time the witness was
00277-09| put under oath by me:
00277-10| That the testimony of the witness and all
00277-11| objections made at the time of the examination
00277-12| were recorded stenographically by me, were
00277-13| thereafter transcribed under my direction and
00277-14| supervision and that the foregoing is a true
00277-15| record of same.
00277-16| I further certify that I am neither
00277-17| counsel for nor related to any party to said
00277-18| action, nor in any way interested in the outcome
00277-19| thereof.
00277-20| IN WITNESS WHEREOF, I have subscribed
00277-21| my name this 15th day of January, 1999.
00277-22| _____
00277-23| JANE F. ALLEN
00277-24| Registered Professional Reporter

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00278-01| I N D E X
00278-02| VOLUME I

00278-03	THURSDAY, JANUARY 7, 1999	
00278-04	WITNESS	EXAMINATION
00278-05	LYNN BEASLEY	
00278-06	(By Mr. Kristal)	4
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00279-01	DEPOSITION EXHIBITS		
00279-02	LYNN BEASLEY		
00279-03	NUMBER	DESCRIPTION	IDENTIFIED
00279-04	1	Curriculum Vitae	6
00279-05	2	Mizerski Article	54
00279-06	3	Mangini Excerpt	70
00279-07	4	10-19-84 Memo	120
00279-08	5	3-12-86 Memo	131
00279-09	6	Marketing Research Report	147
00279-10	7	12-4-87 Memo	166
00279-11	8	Amended Exhibit B	182
00279-12	9	Exhibit B to Expert	182
00279-13	Disclosure		

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00280-01	DEPOSITION EXHIBITS (CONTINUED)		
00280-02	LYNN BEASLEY		
00280-03	NUMBER	DESCRIPTION	IDENTIFIED
00280-04	10	Expert Report	182
00280-05	11	Roper Study	204
00280-06	12	Roper Letter	205
00280-07	13	Roper Study	214
00280-08	15	Project SPA Presentation	252
00280-09	Board of Directors 7/16/87		